TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 1084.

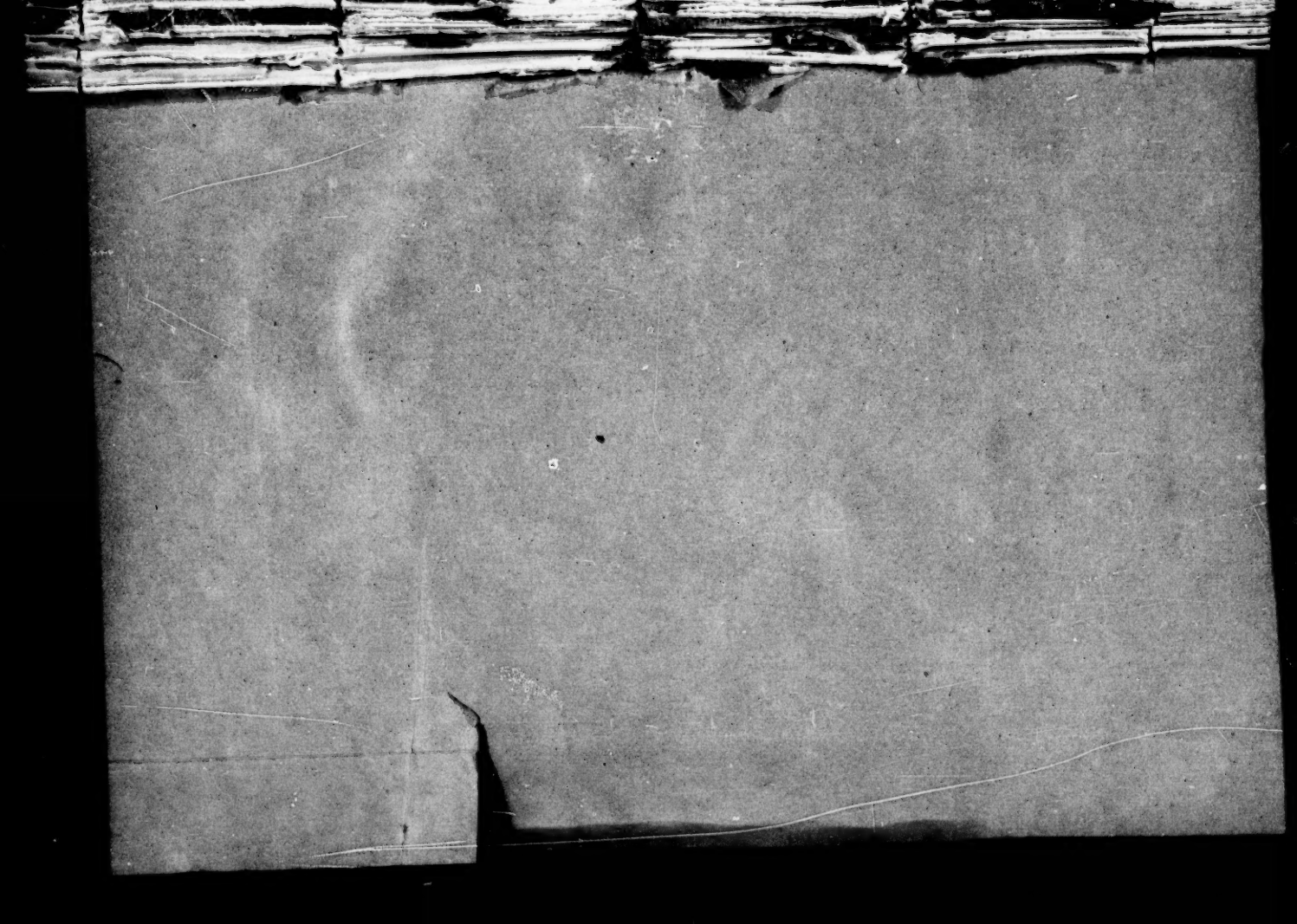
MICHAEL McCORMICK, APPELLANT,

vs.

JOHN JAY KNOX, COMMISSIONER OF THE FREEDMAN'S SAVINGS AND TRUST COMPANY, ET AL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 17, 1881.



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1 In the supreme court of the District of Columbia, the 3rd day of March, 1879.

MICHAEL MCCORMICK
vs.
JOHN A. J. CRESWELL, ROBERT PURVIS, Robert H. T. Leipold, commissioners of the Freedman's Savings and Trust Company, Mary J. Wheeler, William H. Ward, jr.
} Equity. No. 6690.

To the supreme court of the District of Columbia, holding an equity court for said District.

Plaintiff complains as follows:

1st. Plaintiff and all the defendants are residents of the District of Columbia.

The defendant Wheeler is sued in her own right; the defendant Ward is sued as trustee; the other defendants are sued as the commissioners of the Freedman's Savings and Trust Company.

2nd. The defendant Mary J. Wheeler, on the 1st day of July, 1872,
2 was the owner in fee simple of a part of lot numbered one and of a part of lot numbered four in square seven hundred and thirty-one, in the city of Washington and District of Columbia, more particularly described as follows: Beginning for the same at the southwest corner of said lot one, and running thence northeastwardly along the west line of said lot seventy-three feet and one inch to the northwest corner of said lot numbered one, thence north along the west line of said lot four twenty feet, thence east twenty-seven feet, thence southwestwardly to a point forty-eight feet from Pennsylvania avenue, measured on a line perpendicular to said avenue, and twenty-three feet from the west line of said lot numbered one, measured on a line parallel to the line of said avenue, and from said point forty-eight feet to said avenue, measured on said perpendicular line to said avenue, thence westwardly along the line of said avenue twenty-three feet to the place of beginning; and being so seized of said described premises
3 said Mary J. Wheeler did on said 1st day of July, 1872, give a deed of trust thereon to the defendant William H. Ward, jr., as trustee to secure a promissory note for $2,000, made by the said Mary J. Wheeler, bearing date July 1st, 1872, and payable to the order of R. W. Bruff, one year after date, with interest from date at ten per cent. per annum, which promissory note was endorsed by the said Bruff, and delivered, as plaintiff is informed and believes, to the Freedmen's Savings and Trust Company as collateral security for certain other notes held by said company, the amount of which is unknown to the plaintiff; said trust deed was duly recorded in liber 685, folio 359, of the land records of the District of Columbia, to which plaintiff refers and makes part hereof.

3rd. On the 3rd day of June, 1873, said Mary J. Wheeler, being indebted to the plaintiff in a large sum of money, gave to the plaintiff a deed absolute on its face of the fee of the above described premises, which said deed was duly recorded on the 9th day of June, 1873, in liber 719, folio 358, of the land records of the District of Columbia, to which record the plaintiff , and makes a part hereof.

4 4th. On the said 3rd day of June, 1873, the plaintiff and the defendant Wheeler entered into an agreement in relation to said last specified conveyance, a copy of which agreement is as follows:

This agreement made this third day of June, A. D. 1873, by and between Mary J. Wheeler and Michael McCormick; whereas the said Mary J. Wheeler has by deed dated June third, 1873, conveyed unto the said Michael McCormick in fee simple, parts of lots one (1) and 4 (4) in square No. seven hundred and thirty (730), in the city of Washington, D. C. Now, therefore, it is hereby understood and agreed that if the said Mary J. Wheeler, her heirs or assigns, shall pay or cause to be paid unto the said McCormick, on or before the first day of January, 1874, the sum of forty-two hundred dollars ($4,200), with interest at ten per centum per annum from November 6th, 1872, and all further sums of money that the said McCormick may for, or by reason of his ownership of said property pay out, with interest as aforesaid, then the said Michael McCormick, his heirs or assigns shall reconvey unto the said Mary J. Wheeler, her heirs and assigns, to hold as in her former state.

Witness our hands and seals.

MARY J. WHEELER. [SEAL.]
MICHAEL McCORMICK. [SEAL.]

Sealed in the presence of—
DANIEL O. C. CALLAGHAN.
GEORGE B. STONE.

5th. The defendant Ward caused said real estate to be advertised for sale under said deed of trust to him on the 17th day of March, 1876, and on said day assumed to sell the same, at which alleged sale, said commissioners of said Freedmen's Saving's and Trust Company made a single bid of $1,400, and the same was accepted by said trustee, and the property was declared sold to said commissioners, and a deed was made of a portion of said property by said Ward and delivered to said commissioners, which said deed was, on the 24th day of March, 1876, duly recorded in liber 814, folio 311, of the land records of the District of Columbia, to which record plaintiff refers and makes a part hereof; and said Ward rendered the following account of the sale:

Note		2,000	
10 % 1 y'r to maturity	200		
6 % from maturity to March 17, '76	325 33		
		525	33
Auctioneer's fees		66	91
Trustee's "		42	
Improvement tax		146	10
½ taxes due		41	02
And penalty		4	10
		$2,825	46

The day of said sale, 17th of March, 1876, was a stormy day, and a semi-holiday; only about eight persons including boys, auctioneer, and bellman, were present at the sale, and no bids were made, save the one on behalf of said company, which was less than one-fourth the value of the property said Ward assumed to sell; and of the moneys received under said alleged sale, one hundred and fifty dollars were illegally used by said trustee in payment of taxes alleged to be due on said property.

Plaintiff is advised that said alleged sale is null and void, and that plaintiff as a junior mortgagee of said property has a legal and

7 equitable right to have said sale declared null and void, and to have said deed made by said Ward cancelled, and to redeem said property from said deed of trust made by said Wheeler to said Ward.

After said alleged sale of said property said commissioners took forcible possession thereof, and have held it ever since. Said real estate is improved by a well built spacious brick house, the rental value of which during the three years last past has been worth $60 per month.

Whatever sum of money may be found due on the note secured by said deed of trust from said Wheeler to said Ward, plaintiff is ready and willing to pay, and hereby tenders payment thereof.

PRAYER.

Plaintiff prays as follows:

1st. That a decree may be passed declaring null and void said alleged sale of the premises above described, made on the 17th day of March, 1876, by the defendant Ward to said commissioners of said Freedman's Savings and Trust Company, and that the deed
8 given for a portion of said premises by said Ward to said commissioners may be cancelled.

2nd. That an account may be taken of the moneys due on the promissory note specified in said deed of trust from said Ward to said commissioners, and also an account of the value of the rents of said property while in the possession of said commissioners, and that the same may be offset pro tempo against any sum of money that may be found due on the said note as aforesaid.

3rd. The plaintiff prays for such other and further relief in the premises as the nature of the case may require.

To which end the plaintiff prays for process directed to the defendants commanding them to appear and answer the exigency of this bill, but not under oath, answer under oath being hereby expressly waived.

The defendants to this bill of complaint are John A. J. Creswell, Robert Purvis, Robert H. T. Leipold, commissioners of the Freedman's Savings and Trust Company, Mary J. Wheeler, and William H. Ward, jr.

MICHAEL McCORMICK.

9 DISTRICT OF COLUMBIA,
County of Washington, ss:

Personally appeared Michael McCormick, who made oath in due form of law that the above statement (bill) is just and true, as so far as he states from information and belief, he believes to be true.

March 15th, 1879.

MICHAEL McCORMICK.

JAS. A. TAIT,
NOTARY PUBLIC,
WASHINGTON, D. C.

JAS. A. TAIT,
Notary Public.

Filed March 15, 1879. R. J. Meigs, clerk.

This agreement made this third day of June, A. D. 1873, by and between Mary J. Wheeler and Michael McCormick; whereas the said Mary J. Wheeler has by deed dated June third, 1873, conveyed unto the said Michael McCormick in fee simple, parts of lots one (1) and 4 (4) in square No. seven hundred and thirty (730), in the city of Washington, D. C. Now, therefore, it is hereby understood and agreed that if the said Mary J. Wheeler, her heirs or assigns, shall pay or cause to be paid unto the said McCormick, on or before the first day of January, 1874, the sum of forty-two hundred dollars ($4,200), with interest at ten per centum per annum from November 6th, 1872, and all further sums of money that the said McCormick may for, or by reason of his ownership of said property pay out, with interest as aforesaid, then the said Michael McCormick, his heirs or assigns shall reconvey unto the said Mary J. Wheeler, her heirs and assigns, to hold as in her former state.

Witness our hands and seals.

MARY J. WHEELER. [SEAL.]
MICHAEL McCORMICK. [SEAL.]

Sealed in the presence of—
DANIEL O. C. CALLAGHAN.
GEORGE B. STONE.

5th. The defendant Ward caused said real estate to be advertised for sale under said deed of trust to him on the 17th day of March, 1876, and on said day assumed to sell the same, at which alleged sale, said commissioners of said Freedmen's Saving's and Trust Company made a single bid of $1,400, and the same was accepted by said trustee, and the property was declared sold to said commissioners, and a deed was made of a portion of said property by said Ward and delivered to said commissioners, which said deed was, on the 24th day of March, 1876, duly recorded in liber 814, folio 311, of the land records of the District of Columbia, to which record plaintiff refers and makes a part hereof; and said Ward rendered the following account of the sale:

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And penalty		4	10
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The day of said sale, 17th of March, 1876, was a stormy day, and a semi-holiday; only about eight persons including boys, auctioneer, and bellman, were present at the sale, and no bids were made, save the one on behalf of said company, which was less than one-fourth the value of the property said Ward assumed to sell; and of the moneys received under said alleged sale, one hundred and fifty dollars were illegally used by said trustee in payment of taxes alleged to be due on said property.

Plaintiff is advised that said alleged sale is null and void, and that plaintiff as a junior mortgagee of said property has a legal and

7 equitable right to have said sale declared null and void, and to have said deed made by said Ward cancelled, and to redeem said property from said deed of trust made by said Wheeler to said Ward.

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2nd. That an account may be taken of the moneys due on the promissory note specified in said deed of trust from said Ward to said commissioners, and also an account of the value of the rents of said property while in the possession of said commissioners, and that the same may be offset pro tempo against any sum of money that may be found due on the said note as aforesaid.

3rd. The plaintiff prays for such other and further relief in the premises as the nature of the case may require.

To which end the plaintiff prays for process directed to the defendants commanding them to appear and answer the exigency of this bill, but not under oath, answer under oath being hereby expressly waived.

The defendants to this bill of complaint are John A. J. Creswell, Robert Purvis, Robert H. T. Leipold, commissioners of the Freedman's Savings and Trust Company, Mary J. Wheeler, and William H. Ward, jr.

MICHAEL McCORMICK.

9 DISTRICT OF COLUMBIA,
County of Washington, ss:

Personally appeared Michael McCormick, who made oath in due form of law that the above statement (bill) is just and true, as so far as he states from information and belief, he believes to be true.

March 15th, 1879.

MICHAEL McCORMICK.

JAS. A. TAIT,
NOTARY PUBLIC,
WASHINGTON, D. C.

JAS. A. TAIT,
Notary Public.

Filed March 15, 1879. R. J. Meigs, clerk.

10 In the supreme court of the District of Columbia, March 15th, 1879.

MICHAEL MCCORMICK, COMPLAINANT, *against* F. S. & T. CO. ET AL., DEFENDANT. } No. 6690. Equity docket.

The President of the United States to Mary J. Wheeler, defendant:

You are hereby commanded to appear in this court at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the bill, under pain of attachment, and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk*, &c.,
By M. A. CLANCEY, *Ass't Clerk*.

Electro's.]

Service acknowledged.

MARY J. WHEELER.

11 In the supreme court of the District of Columbia.

MICHAEL MCCORMICK *vs.* JOHN A. J. CRESWELL, ROBERT PURVIS, AND Robert H. T. Leipold, commissioners of the Freedman's Savings and Trust Company and others. } Equity. No. 6690.

The separate answer of John A. J. Creswell, Robert Purvis, and Robert H. T. Leipold, commissioners of the Freedman's Savings and Trust Company, to the bill of complaint of the above named Michael McCormick, respectfully shows as follows:

First. They admit the averments contained in the first paragraph of the said bill.

Second. These defendants, answering the averments contained in the second paragraph of the said bill, say that on or about the 1st day of July, 1872, said defendant, Mary J. Wheeler, purchased from one Richard W. Bruff, the property described in the said paragraph of the

12 said bill, and that to secure a part of the purchase-money thereon, she executed and delivered to the said Richard W. Bruff her promissory note bearing date on that day, for the sum of $2,000.00, payable to the said R. W. Bruff in one year from date, with interest thereon at the rate of ten per cent. per annum, and to secure the payment of the said promissory note, the said Mary J. Wheeler, did on that day, execute, acknowledge and deliver to William H. Ward a deed of trust, whereby she conveyed the said property to the said William H. Ward in trust with the usual powers of sale. But these defendants further say that at the time of the said sale of the said property to the said Mary J. Wheeler, there were two outstanding incumbrances thereon, as follows, to wit: That the said Richard Bruff, being indebted to one A. B. Myers in the sum of $5,000.00, for which sum the said Myers held a certain promissory note, payable five years after date, with interest at the rate of ten per centum per annum, payable semi-annually, did

13 make, acknowledge and deliver to one J. B. Wimer, a deed of trust, whereby he conveyed to the said Wimer the said property mentioned and described in the said second paragraph of the said bill.

The said deed of trust bears date on the 3rd day of October, 1871, and was duly recorded on the 7th day of October, 1871, amongst the land records of the District of Columbia. Said Bruff, being further indebted to the Capitol Hill Building Association No. 2 in the sum of $2,000.00, represented by a bond held by said building association, for said sum, did on the 19th day of June, 1872, execute, acknowledge and deliver to S. N. Hilton and F. X. Dooley a deed of trust whereby he conveyed to said Hilton & Dooley all that portion of lot four (4) in square 730, mentioned and described in the second paragraph of the said bill, which deed of trust was duly recorded on the 26th day of June, 1872, amongst the land records of the District of Columbia.

14 Third. In answer to the third paragraph of the said bill, these defendants say, on information and belief, that at the time of the conveyance mentioned in the said paragraph, there was an outstanding deed of trust made by the said Mary J. Wheeler to Daniel L. Eaton and G. W. Stickney, which was dated November 6, 1872, and duly recorded amongst the land records of the District of Columbia on the 6th day of November, 1872; said deed of trust was made, acknowledged, and delivered by the said Mary J. Wheeler to the said Eaton and Stickney, to secure the payment of a debt due to said Michael McCormick, in the sum of $4,000.00, payable in six months with interest at ten per centum per annum, and that the said absolute deed, as they are advised, was only cumulative, as security upon the said deed of trust.

Fourth. In answer to the fourth paragraph of the said bill these defendants say that they have no personal knowledge, and can neither admit nor deny the averments contained in the said paragraph.

Fifth. In answer to the averments contained in the fifth para-
15 graph of the said bill, these defendants say that, as commissioners of the Freedman's Savings and Trust Company, they took possession of the assets of the said corporation on or about the 11th day of July, 1874, and that amongst the assets of the said corporation they found the said promissory note of the said Mary J. Wheeler, for the sum of $2,000.00, secured by the deed of trust to William H. Ward, bearing date on the 1st day of July, 1872, as hereinbefore stated; that default being made in the payment of the said promissory note, by their direction the said William H. Ward (not William H. Ward, jr., as erroneously stated in said bill), advertised the said property, and proceeded to, and did on the 17th day of March, 1876, sell the same, and that said sale was made, subject to the said deed of trust, to J. B. Wimer, dated October 3, 1871, and that the said property was bought in by them at the said sale, and a conveyance was duly made by the said Ward trustee, and delivered to them, and duly recorded, as stated in the said bill; that the said conveyance was made to them
16 subject to the said prior incumbrance, created by the said deed of trust from Richard W. Bruff to J. B. Wimer, as aforesaid.

Sixth. Further answering, these defendants deny that there was but a single bid at the said sale; they aver the truth to be that there were several bids; the exact number of which they are unable now to state; that there was a goodly number of persons at the said sale; that the weather was pleasant, and that the sale was in all respects fair and properly conducted.

Seventh. Further answering, these defendants say that prior to the said sale of the 17th of March, 1876, default having been made touching the incumbrance bearing date June 19, 1872, hereinbefore mentioned, the trustees, Hilton and Dooley, advertised all of that portion of said lot four (4) in said square 730, under the deed of trust to them,

and sold the same, thereby cutting out the security of these defendants created by the deed of trust to Ward on that portion of said lot No. 4; and further, at the time of the said sale by Ward, as
17 aforesaid, a note in favor of the said A. B. Myers, secured by the deed of trust, dated October 3, 1871, to J. B. Wimer, was outstanding and unpaid, and that the amount due thereon at the time of said sale was about the sum of $5,752.78.

After the said sale by the said Ward, and the delivery of the said conveyance to these commissioners, a resale of the property being threatened by the said J. B. Wimer, trustee, under the trust securing the note held by A. B. Myers, on account of the large arrearage of unpaid interest due on said note, the said commissioners paid to the holder thereof the said overdue interest as well as the interest for the next ensuing six months, amounting in all to the sum of $1,040.00, and soon after the maturity of the said note, viz, on or about the 7th day of December, 1876, they paid him the further sum of $5,088.87; that being the balance due for principal and interest on the said promissory note, and therefor the said J. B. Wimer executed and delivered
18 to them a release of the said deed of trust, whereby he released the said property to these commissioners, which deed of release bears date on the 7th day of December, 1876, and will be found duly recorded in the land records of the District of Columbia, on the 8th day of December, 1876, in liber No. 839, folio 218.

Eighth. These defendants, further answering, say that it is not true that they have forcible possession of the said property; they aver the truth to be that the tenant of the said property, to wit, Charles F. Conant, voluntarily attorned to these defendants, and continued to pay the rent from that time until on or about the day of 187 , when he vacated the said property; that the said commissioners then, from time to time, rented the said property as they could obtain tenants, and thus held possession peaceably and quietly, until on or about the 17th day of March, 1879, the house being then vacant and the keys being deposited for safe keeping on the adjoining premises, the defend-
19 ant, Mary J. Wheeler, did unlawfully take possession of the said premises upon a written order for that purpose made and signed by the said complainant McCormick.

In order to secure such unlawful possession, the said Mary J. Wheeler and the said McCormick did, both of them, fraudulently and with the intention of cheating and defrauding the creditors of the Freedman's Savings and Trust Company, obtain the keys to the said property by falsehood and entered upon the said property, and have ever since detained and now do forcibly detain possession thereof from these defendants.

Ninth. Further answering the said bill, these defendants say that they purchased the said property at the said sale for the sum of $1,400.00, and that they have also paid on account of the said note, secured by the deed of trust, to the said Wimer, the sum of $6,128.87 making a total of $7,528.87 for the said property; and they are advised and believe, and so believing charge, that the said property is not worth more than the sum of $7,000.00, and that it could not be sold for that
20 amount at the present time.

They further say that, in addition to the said amount, they have paid on account of taxes, repairs, insurance, &c., on the said property the sum $519.72.

Tenth. The commissioners of the Freedman's Savings and Trust Company above named are willing to turn over the said property to the

said McCormick, provided the said McCormick shall pay to them the amount due on the said promissory note of $2,000.00, the amount paid to the said A. B. Myers, together with all taxes, interest, repairs, and costs by them paid out or allowed, less the rents collected and received by them on account of the said property, and they hereby make the said offer in this their answer.

And these defendants, having fully answered, pray to be hence dismissed, with their reasonable costs and charges.

J. A. J. CRESWELL,
ROBERT PURVIS,
ROBERT H. T. LEIPOLD,
Commissioners F. S. & T. Co.

ENOCH TOTTON and R. H. T. LEIPOLD,
For Com'rs.

21 DISTRICT OF COLUMBIA,
County of Washington, ss:

I, Robert H. T. Leipold, being first duly sworn, do depose and on my oath say that I have read the foregoing answer by me subscribed, and know the contents thereof; that the facts therein stated upon information and belief, I believe to be true, and that the facts therein stated upon personal knowledge are true.

ROBERT H. T. LEIPOLD.

Subscribed and sworn to before me this 17th day of April, 1879.

R. J. MEIGS, *Clerk*,
By M. A. CLANCEY,
Ass't Clerk.

22 In the supreme court of the District of Columbia.

MICHAEL MCCORMICK
vs.
JOHN A. J. CRESWELL ET AL. } Equity. No. 6690.

On motion of the solicitor for John A. J. Creswell, Robert Purvis, and Robert H. T. Leipold, commissioners of the Freedman's Savings and Trust Company, leave of court is hereby granted to said commissioners to file their cross-bill in the above-entitled cause.

By the court.

MAC ARTHUR, *Justice.*

23 In the supreme court of the District of Columbia.

MICHAEL MCCORMICK
v.
JOHN A. J. CRESWELL, ROBERT PURVIS, AND Robert H. T. Leipold, commissioners of the Freedman's Savings and Trust Company; Mary J. Wheeler, and William H. Ward, jr. } Equity, No. 6690.

Cross-bill.

The cross-bill of John A. J. Creswell, Robert Purvis, and Robert H. T. Leipold, commissioners of the Freedman's Savings and Trust Company, in the above-entitled cause, filed by Cave of the court first has and obtained, respectfully shows as follows, to wit:

First. That the said John A. J. Creswell, Robert Purvis, and Robert H. T. Leipold, are commissioners of the Freedman's Savings and Trust Company, duly appointed according to law, to take charge of the assets and settle up the business of the Freedman's Savings and Trust
24 Company, and that on or about the 11th day of July, 1874, they, having been duly qualified according to law, took possession of the assets and business of the said Freedman's Savings and Trust Company, and that they have been in possession thereof ever since.

Second. Amongst the assets of the Freedman's Savings and Trust Company they found a promissory note of one Mary J. Wheeler, a defendant in the above-entitled cause, bearing date on the first day of July, 1872, payable to the order of R. W. Bruff, for the sum of $2,000.00 one year after date, with interest at the rate of ten (10) per centum per annum; that the said promissory note was for a part of the purchase money of the property described in the second paragraph of the original bill in this cause; that the payment of the said promissory note was secured by a deed of trust bearing date on the 1st day of July, 1872, in the land records of the District of Columbia, whereby said Mary
25 J. Wheeler conveyed to William H. Ward in trust all of the said property mentioned and described in the second paragraph of the original bill in this cause.

Third. That Richard W. Bruff and wife, on or about the 29th day of June, 1872, executed and delivered to the said Mary J. Wheeler a deed in fee, whereby they conveyed unto her the said property mentioned and described in the second paragraph of said bill, which deed was duly recorded on the 9th day of July, 1872, amongst the land records of the District of Columbia. At the time of the said conveyance by the said Bruff and wife to the said Mary J. Wheeler of the said property, the same was incumbered by two deeds of trust, as follows, to wit: 1. A deed of trust made by the said R. W. Bruff and wife to J. B. Wimer, bearing date October 3rd, 1871, and recorded in October 7, 1871, amongst the land records of the District of Columbia, to secure the payment of a promissory note to one A. B. Myers, for the sum of $5,000.00, payable in five years after date, with interest thereon at the rate of ten per centum per annum, payable semi-annually, and conveys
26 all of the said real estate mentioned in the second paragraph of the said bill. 2. Deed from R. W. Bruff and wife to S. N. Hilton and F. X. Dooley, bearing date June 19th, 1872, and recorded on the 26th day of June, 1872, amongst the land records of the District of Columbia, which deed of trust was made to secure a bond for the sum of $2,000.00 in favor of the Capitol Hill Building Association No. 2, and that the said deed of trust conveys the south twenty feet front by the depth of said lot four (4), and covers all that part of lot four (4) mentioned and described in the second paragraph of the original bill in this cause.

Fourth. Default having been made by the said Mary J. Wheeler in the payment of the said promissory note for $2,000.00, bearing date July 1st, 1872, these commissioners of the Freedman's Savings and Trust Company directed the said William H. Ward to proceed to advertise and sell the said property, which he accordingly did, and the said sale was made on the 17th day of March, 1876; at the said sale the commissioners of the Freedman's Savings and Trust Company being
27 the highest bidders the property was knocked down to them for the sum of $1,400.00, subject to the encumbrance created by the deed of trust mad' by Richard W. Bruff to J. B. Wimer, dated October 3, 1871, hereinbefore mentioned, and upon which there was due

on account of principal and interest at the time of said sale the sum of $5,752.78.

That a conveyance was made by the said Ward in pursuance of the said sale to the said commissioners of the Freedman's Savings and Trust Company, which conveyance bears date March 21, 1876, and was recorded on the 24th day of March, 1876, and was made subject to the said deed of trust to the said J. B. Wimer.

That before the said sale made by the said Ward, default having been made in the payment of the debt secured by the deed of trust to Hilton and Dooley in favor of the said Capitol Hill Building Association No. 2, the said trustees advertised all that portion of lot four (4) in said square 730 mentioned and described in the second paragraph of the original bill, and sold the same, thereby cutting out that portion of the said property from the security held by the Freedman's Savings and Trust Company.

28 Fifth. After the conveyance as aforesaid by the said Ward to these commissioners they took possession of the said property and collected and received the rent thereof during the tim' the same was occupied up *the* and about the 17th day of March, 1879. A resale of the property being threatened by the said J. B. Wimer, trustee, under the trust se'uring the note held by A. B. Myers, on account of the large arrearage of unpaid interest due on said note, the said commissioners paid to the holder thereof the said overdue interest as well as the interest for the next ensuing six months, amounting in all to the sum of $1,040.00, and soon after the maturity of the said note, viz, on or about the 7th day of December, 1876, they paid him the further sum of $5,088.87, that being the balance due for principal and interest on the said promissory note, and that thereupon a deed of release was made by the said J. B. Wimer, trustee, to these commissioners, and for their benefit and advantage, of all of the said property cov-

29 ered by the said deed of trust to him the said J. B. Wimer, which deed of release was duly recorded amongst the land records of the District of Columbia on the 8th day of December, 1876.

Sixth. That on or about the 17th day of March, 1879, the said Michael M. McCormick, complainant in this cause, and the said Mary J. Wheeler unlawfully combined and conspired together for the purpose of injuring and defrauding the creditors of the Freedman's Savings and Trust Company, and unlawfully took possession of the said property and still forcibly holds and detains possession thereof from these commissioners.

That the said Mary J. Wheeler, or the said Mary J. Wheeler and the said Michael M. McCormick, by fraud and falsehood, obta'ned possession of the keys of the said property, the said property being temporarily unoccupied.

Seventh. They further say that they have already paid out on account of the said property, counting the proceeds of the said sale as aforesaid, and the amount paid on account of the said promissory

30 note, the sum of $7,528.87, and in addition to this have paid for taxes, repairs, insurance, &c., on the said property the sum of $519.72.

That the said property is improved by a comfortable dwelling house, and the rental value thereof is or ought to be about the sum of $50.00, per month.

Eighth. The commissioners of the Freedman's Savings and Trust Company above named are willing to turn over the said property to the said McCormick, provided the said McCormick shall pay to them

the amount due on the said promissory note of $2,000.00, the amount paid to the said A. B. Myers, together with all taxes, interest, repairs, and costs by them paid out and allowed less the rent collected and received by them on account of the said property, and they hereby make the said offer in this their cross-bill.

They therefore pray, as follows:

1. That a subpœna may be issued directed to the said Mary J. Wheeler, and Michael M. McCormick.

2. That the said Mary J. Wheeler, and the said Michael M. McCormick, may be enjoined and restrained from interfering with or molesting these commissioners of the Freedman's Savings and Trust
31 Company, in the peaceful and quiet possession of the said property.

3. That the said Mary J. Wheeler and the said Michael M. McCormick, either or both of them, may be required to deliver up possession of the said property, and to account for the rents, profits, while they have or might have collected from the said property, and for the damages which have resulted or may hereafter result from the said unlawful and forcible possession of the said premises.

4. That all the proceedings in the said sale made by the said Ward may be ratified and confirmed by this court, and that their title may be declared to be good in and to the said premises.

5. That they may have such others and general relief as they may be ent'tled to have in equety and good conscience.

JNO. A. J. CRESWELL,
ROBERT PURVIS,
ROBERT H. T. LEIPOLD,
Commissioners F. S. T. Co.

ENOCH TOTTEN and R. H. T. LEIPOLD,
For Com'rs.

32 DISTRICT OF COLUMBIA,
County of Washington, ss:

I, Robert H. T. Leipold, being first duly sworn, do depose and on my oath say that I have read the foregoing cross-bill by me subscribed, and know the contents thereof; that the facts therein stated upon information and belief I believe to be true, and that the facts therein stated upon personal knowledge are true.

ROBERT H. T. LEIPOLD.

Subscribed & sworn to before me this 17' day of April, 1879.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY,
Ass't Clerk.

33 In the supreme court of the District of Columbia, April 17, 1879.

MICHAEL MCCORMICK, COMPLAINANT,
against
F. S. & T. CO. ET AL., DEFENDANT. } No. 6690. Equity docket.

The President of the United States, to Michael McCormick, Mary J. Wheeler, defendants:

You are hereby commanded to appear in this court, at its first special term, occurring twenty days after service of this subpœna, and answer

the exigency of the cross-bill, under pain of attachment and such other process of contempt as the court shall award.

R. J. MEIGS,
Clerk, &c.,

Electro's.] By M. A. CLANCY,
Ass't Clerk.

Witness:
D. K. CARTTER, *Chief Justice.*

Summoned all May 10th, 1879.

F. DOUGLASS,
Marshal.

34 In the supreme court of the District of Columbia, the 13th day of May, 1879.

MICHAEL MCCORMICK
vs.
JOHN A. J. CRESWELL ET AL. } Equity. No. 6690.

The plaintiff moves the court for leave to amend his bill of complaint, by filing the amendment hereto annexed.

O. D. BARRETT,
Counsel for Plaintiff.

Take notice that the above motion will be called up for hearing on Saturday, the 17th day of May, 1879, at 11 o'clock a. m., or as soon thereafter as counsel can be heard.

O. D. BARRETT,
Counsel for Plaintiff.

Received copy of above motion this 13th day of May, 1879.
ENOCH TOTTEN,
P'r BAILEY.

35 In the supreme court of the District of Columbia, the 13th day of May, 1879.

MICHAEL MCCORMICK
vs.
JOHN A. J. CRESWELL, ROBERT PURVIS, ROBERT H. T. Leipold, commissioners of the Freedman's Savings and Trust Company; Mary J. Wheeler, William H. Ward, jr. } Equity. No. 6690.

To the supreme court of the District of Columbia, holding an equity court for said District:

Plaintiff amends his bill as follows: By striking out the name of William H. Ward, jr., defendant, wherever it appears in said bill, and inserting in the place thereof the name of William H. Ward.

O. D. BARRETT,
Counsel for Plaintiff.

36 In the supreme court of the District of Columbia, the 13th day of May, 1879.

MICHAEL MCCORMICK
vs.
JOHN A. J. CRESWELL ET AL. } Equity. No. 6690.

The plaintiff hereby joins issue with the defendants Creswell, Purvis, and Leipold.

O. D. BARRETT,
Counsel for Plaintiff.

37 In the supreme court of the District of Columbia. In equity. No. 6690.

MICHAEL MCCORMICK
vs.
JOHN A. J. CRESWELL, ROBERT PURVIS, Robert H. F. Leipold, Mary J. Wheeler, & W. H. Ward. } Cros'-bill of John A. J. Creswell, Robert Purvis, Robert H. T. Leipold, commissioners, vs. Michael McCormick & Mary J. Wheeler.

Comes the said Mary J. Wheeler, and says that the cross-bill of the said John A. J. Creswell, Robert Purvis, and Robert H. T. Leipold, commissioners, &c., is bad in substance, for the want of equity, so far as it relates to this defendant.

And as a ground for the said demurrer, she avers that the complaints of said commissioners, as set forth against her in said cross-bill, are all adjustable in a court of law, in which the said complainants have an adequate remedy.

W. R. SMITH,
Solicitor for Mrs. Wheeler.

38 The said Mary J. Wheeler, being duly sworn, says that this demurrer is not interposed for delay.

MARY J. WHEELER.

Subscribed and sworn to before me, Sept. 2, 1879.
R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk.*

I certify that, in my opinion, there is good ground for the foregoing demurrer in law.

W. R. SMITH,
Sol. for Mrs. Wheeler.

39 In the supreme court of the District of Columbia.

MICHAEL MCCORMICK
vs.
JOHN A. J. CRESWELL & OTHERS. } Equity. No. 6690.

It appearing that the cross-bill of the commissioners of the Freedman's Savings and Trust Company was, by leave of the court, filed on the 17th day of April, 1879, and that service of process was duly had on the said Michael McCormick and Mary J. Wheeler on the tenth day of May, 1879; and it further appearing that no appearance has been entered for or answer to said cross-bill filed by either the said Michael

McCormick or the said Mary J. Wheeler, it is, on motion of R. H. T. Leipold, solicitor for the said commissioners of the Freedman's Savings and Trust Company, ordered, adjudged, and decreed that the said cross-bill be and the same is hereby taken for confessed as against said Michael McCormick and said Mary J. Wheeler.

Sept. 2, 1879.

By the court.

MAC ARTHUR, *Justice.*

40 In the supreme court of the District of Columbia.

MICHAEL MCCORMICK *vs.* JOHN A. J. CRESWELL ET AL. } Equity. 6690.

On motion of the solicitor of defendants in the cross-bill, Mary J. Wheeler and Michael McCormick, defendants in the cross-bill of complainants, it is ordered, this 13th day of September, 1879, that the decree pro confesso heretofore passed against said defendants be and the same is hereby set aside, and that the said defendants have fifteen days to plead, answer, or demur after this date, Sept. 13th, 1879.

By the court:

MAC ARTHUR, *Justice.*

41 In the supreme court of the District of Columbia, the day of September, 1879.

MICHAEL MCCORMICK *vs.* JOHN A. J. CRESWELL ET AL. } In equity. No. 6690.

The separate answer of Michael McCormick to the cross-bill of J. A. J. Creswell et al.

In answer to said cross-bill I say as follows:

1st. I admit the allegations of the first paragraph of the cross-bill.

2nd. I admit that the promis'ory note of Mary J. Wheeler was found amongst the papers and in the banking-house of the said Freedman's Savings and Trust Company, but do not admit that it was a part of the assets of said company. Affiant is informed and believes, and so states the fact to be, that the said promis'ory note was not given for a part of the purchase money of the property described in the original bill, and so he denies that part of the second paragraph.

Affiant is informed and believes, and so states the fact to be, that the said company received said note as collateral for other debts due by Richard W. Bruff, and held it only as collateral security for such

42 other indebtedness, and so he denies that it was a part of the assets of said company, or that they ever had any legal right to the same, and so he avers that the claim to said note as the assets of said company is fraudulent; and affiant futher avers that he is informed and believes, and so states the fact to be, that the said complainants have admitted that the said note was only held as collateral security for other indebtedness; and he also avers that the said company has received payment in whole or in part of the said other indebtedness for which they claimed said Wheeler's note as collateral. I admit that the deed of trust was given to secure the payment of said note.

3rd. I admit the conveyance of Bruff & wife to Wheeler, as set forth in the 3rd paragraph of the cross-bill, but I have no accurate knowledge as to the other conveyances referred to in the said 3rd paragraph, but suppose they are true. But I do not know the extent of the incumbrances therein referred to, nor how much money was due on the notes and bonds so alleged as secured by the deeds of trust named in said 3rd paragraph.

4th. I admit that said complainants directed the said trustee,
43 Ward, to proceed to advertise and sell the said property, but I deny that they had any right to give said directions, or to assume to control the said trustee, as they aver they did. I admit that the said trustee advertised the said property for sale in pursuance of said directions, and did sell the same on the 17th day of March, 1876; but I deny that said trustee had any legal right to sell the said property at said date in manner and form, and for the purpose then sold, and I here refer to the 5th paragraph of the original bill in this cause to show that one of the leading objects of *of* the original bill was to have set aside the said sale and to have the deed of conveyance made by said trustee to said complainants cancelled &c., and for other purposes therein set forth.

I admit the statement made in said 4th paragraph touching the sale made in pursuance of the trust-deed to said Hilton & Dooley, but do not admit the legal conclusions as therein stated.

5. I deny that said company ever obtained possession of said premises lawfully, or held it lawfully, but admit that they collected the rents, &c., as stated. I do not know how much money said com-
44 pany paid the parties claiming liens on said property, or upon what authority they paid the same, nor to whom it was paid, but I aver that whatever sums said commissioners so paid were paid recklessly and voluntarily, and at their own risk and assumption, and not by the request or authority of the legal owner of said premises or of this respondent.

6th. I deny the allegations in the 6th paragraph.

7th. I have no knowledge other than that conveyed in the cross-bill as to what amount of money complainants have paid out, as they allege in the 7th paragraph of their said cross-bill, and therefore cannot state, but I require proof thereof, and I deny that I am in any way bound by the same, or that the said payments give to complainants any right to the relief sought in the said cross-bill.

MICHAEL McCORMICK.

M. R. SMITH,
Solicitor for McCormick.

I, Michael McCormick, make oath that I have heard read the answer by me above subscribed, and know the contents thereof; that the matters and things therein stated on my own knowledge are true, and those set forth as upon information & belief I believe to be true.

MICHAEL McCORMICK.

Subscribed & sworn to before me this 29th day of September, 1879.
[SEAL.] JAS. A. TAIT,
Notary Public.

45 In the supreme court of the District of Columbia.

McCORMICK
vs.
CRESWELL ET AL. } Equity. No. 6690.

And now comes the said John A. J. Creswell, Robert Purvis, and Robert H. T. Leipold, commissioners of the Freedman's Savings and Trust Company, and take issue upon the answer of the said Michael McCormick to the cross-bill of said commissioners.

ENOCH TOTTEN,
For Com'rs F. S. & T. Co.

46 In the supreme court of the District of Columbia.

On motion of Enoch Totten, solicitor for the commissioners of the Freedman's Savings and Trust Company, it is this 4th day of October, 1879, ordered, adjudged, and decreed that the cross-bill heretofore filed in the above-entitled cause by said commissioners of the Freedman's Savings and Trust Company be, and the same is hereby, taken for confessed as against the defendant Mary J. Wheeler.

By the court:

MAC ARTHUR, *Justice.*

47 In the supreme court of the District of Columbia.

MICHAEL McCORMICK
vs.
MARY J. WHEELER, JOHN A. J. CRESWELL et al. } Equity. No. 6690.

On motion of Enoch Totten, solicitor for the defendants Creswell & others, commissioners of the Freedman's Savings and Trust Company, it is this 30' day of October, 1879, ordered that the decree pro confesso against Mary J. Wheeler be, and the same hereby is, set aside, and leave is granted to the said Mary J. Wheeler to file her answer herein.

It is further ordered that the cause be referred to Benjamin G. Lovejoy, an examiner of this court, to take and report the testimony, and that the complainant be, and he hereby is, required to close his testimony within twenty days from this date; the defendants, the commissioners of the Freedman's Savings and Trust Company, Mary J. Wheeler and others shall then have twenty days to close their testimony, and then ten days shall be allowed to the complainant to rebut.

48 It is further ordered that the defendant Mary J. Wheeler be, and she hereby is, authorized to file a cross-bill in this cause.

MAC ARTHUR, *Justice.*

I consent.

W. R. SMITH,
For Mrs. Wheeler & M'Cormick.
ENOCH TOTTEN,
For Com'r F. S. & T. Co.

49 In the supreme court of the District of Columbia.

MICHAEL MCCORMICK }
vs. } Equity. No.
JOHN A. J. CRESWELL. }

The separate answer of Mary J. Wheeler to the cross-bill of her co-defendants, said John A. J. Creswell et al., in this cause.

1st. Saving and receiving to herself all benefits and advantages of exceptions or otherwise to said cross-bill she says: She admits the first paragraph of the cross-bill.

2nd. She admits that the said promissory note was found amongst the papers of the Freedman's Saving' and Trust Company; but she denies that it was a part of the assets of said company. She admits that she signed a promissory note of a similar character to the one described, under the circumstances hereinafter stated; but she denies that the said note was for a "part of the purchase money of the property described in second paragraph of the original bill." She says that about the time the said note bears date, W. T. Johnson, her son-in-law, requested her to sign the note stating to her that he wished to
50 accommodate Mr. Bruff (the said Richard W. Bruff) by letting him use the note as collateral security for some debt or debts, that he, Bruff, then owed the bank. Whereupon she signed the note, and the said W. T. Johnson took it. In the transaction she had no interview or understanding of any sort with said Bruff. She avers that at the time she signed said note she did not owe the said Bruff or the said Johnson any money, and that she received no consideration whatever for said note from any person at that or any other time. The said deed of trust was executed under the same circumstances at or about the same time; but she has no recollection of reading the deed, or of hearing it read, and she could not say what it contained, but she admits that it was in some way connected with said note to secure the payment of the same; and that she has no recollection of ever having acknowledged said deed before any officer. The whole matter had been done and arranged at the request as aforesaid of the said W. T. Johnson, who, as respondent is informed and believes and so charges, in some business matters was mixed up and embarrassed with said Bruff, at the time of this transaction. And she further avers that, at the time, she was not in need of money; and
51 that she would not have endangered her property upon a loan at usurious or legal interest if she had not been deceived and overreached in the manner hereinafter stated.

Further answering this respondent avers and charges that at the time of the execution of the said note and the said deed of trust as aforesaid, the said Johnson, who was then, and for a long time previously had been, her confidential advisor and the manager of her business, represented to this respondent that there was no risk in the transaction and no possibility of loss, inasmuch as the said Bruff was a perfectly honorable and just man, and that said Bruff had executed and given to him (said Johnson) for her a blank deed of release with his (Bruff's) signature attached, which said paper said Johnson exhibited to respondent but did not read the same; and she avers that at the time she (respondent) understood and considered the said blank deed to be a complete guarantee against any future liability on said note, and against any future loss or embarrassment to her said property by means of said deed

of trust, and she charges that it was by and through the said representations of said Johnson to respondent as to the character of said deed of release, and his assurance that said blank deed would be a safe and complete guarantee to her against any liability or loss on account
52 of said note and deed of trust, that she was induced to sign the said note and deed of trust; which said blank deed of release is hereto attached, marked Exhibit A, and prayed to be made a part of this answer.

And she avers that she is informed by her counsel now and believes that said blank deed of release is and was of no value whatever to her as a security or guarantee against her liability on said note and deed of trust, as she was led to believe it would be by said Johnson at the time. And she charges that the said note and the said deed of trust were obtained from her fraudulently by the said Johnson and the said Bruff, and were used by them and said company fraudulently and against her will and wishes.

And in this connection further answering the said paragraph, respondent says that the said complainants have nowhere in the said cross-bill averred or charged that they had ever paid a valuable consideration for said note and deed, nor that they had come into the possession of the same legitimately in the usual course of trade; and she denies, upon information and belief, that they ever paid any valuable consideration for said note and deed of trust, or that they came legiti-
53 mately in possession of the same in the usual course of trade; and she submits that she should have the same benefit from this part of her answer as to the said defects in the said cross-bill as if the same were specially presented to the court in a or demur'er.

Further answering the said paragraph, respondent says that she is informed *as* believes and so states the facts to be, that the said company received said note as collateral for other debts due by said Richard W. Bruff, and held it only as such collateral security for such other indebtedness, and so she avers that the claim to said note, as to the assets of said company, by said complainants is fraudulent. And she further avers that she is informed and believes, and so states the facts to be, that the said complainants have admitted that the said note was only held as collateral security for other indebtedness of said Bruff, and that the said company had and has received payment, in whole or in greater part, of the said other indebtedness for which complainants fraudulently claim said note and deed of trust as the assets of the said company.

54 3rd. Respondent admits the conveyance of Bruff and wife to her as set forth in the third paragraph, but she has no accurate knowledge as to the other conveyances or of the incumbrances therein referred to; nor how much money, if any, was due on the notes and bonds so alleged as secured by the deed or deeds of trust named in said paragraph; of all which she demands the proofs.

55 4th. Respondent admits that said complainants directed the said trustee, Ward, to proceed to advertise and sell the said property, but she denies that they had any right to give said directions, or to assume to control the said trustee, as they allege they did. She admits that the said trustee advertised the said property in persuance of said directions, and did sell the same on the 17th day of March, 1876, but she denies that said trustee had any legal right to sell the said property at said date, in manner and form and for the purposes then sold. Respondent has no accurate or personal knowledge of the fact that

the said sale was made subject to the incumbrances as stated, or that the plaintiffs purchased said property subject to said incumbrances, but she insists that said trustee had no legal right or authority to sell the said property subject to said incumbrances.

And respondent herein refers to the fifth paragraph of the original bill in this cause, and from information and belief as therefrom obtained, she adopts the said fifth paragraph of said original bill, from the beginning of same down to and including the words "that said alleged sale is null and void," and prays that it be taken as if herein transcribed as a part of this, her answer. And she further avers that she is informed and believes and so charges that the said property at the time of said sale by said trustee as aforesaid, and which was so sold by him for the said sum of $1,400 to complainants, was worth eight or ten thousand dollars in good money; and that if the said sale had been conducted fairly and honorably the said property should have brought over four times the amount for which it was so knocked down, at said sale, by said trustee.

5th. Respondent does not admit, not knowing, that said company ever obtained possession of said premises lawfully, or held said premises lawfully, but she admits that they collected the rents and appropriated them to their own use.

She does not know how much money, if any, said complainants paid the parties claiming, as complainants allege, liens on said property, or upon what authority complainants paid the same, nor to whom it was paid, if to anybody. But she avers that whatever sums said commissioners so paid were paid recklessly and voluntarily and fraudulently, and with a view to embarrass the owner of, and to throw a cloud on the title to, said property, and at their own risk and assumption, and not by the request or authority of the legal owner of said premises, or of this respondent, and this respondent would be reluctant and slow to believe that said complainants would make voluntary such large payments of money upon such an uncertainty of excepting that they should make them under a secret and fraudulent understanding that they were to be protected in some fraudulent manner by the parties receiving the payments, in case such payments should not be recognized in law as honest and legitimate; respondent has no knowledge of the contract with said J. B. Weimer, as set forth in said fifth paragraph. But she denies that said J. B. Weimer had any right to make such contract as to affect the rights of this respondent, and she invokes the utmost scrutiny of this court touching the said transaction upon the ground.

6th. Respondent denies the sixth paragraph of said bill, and further answering said sixth paragraph she says that the said complainants heretofore, to wit, on day of , and the filing of this said cross-bill, impleaded this respondent in a suit at law, for the identical cause of action in this sixth clause of their said cross-bill specified and set forth. That said complainants are plaintiffs in said suit at law, and that respondent is defendant in said suit at law; that said suit is no pending in the circuit court of the District of Columbia, and this respondent has pleaded thereto, and said cause is known and designated docket in said circuit court, number , on said docket, and now for trial, and respondent here refers to said cross-bill, and to the said sixth paragraph of the same, and to the papers making out declaration in the said suit at law, and prays the same to be taken as a part of this bill for the more perfect verification of the cause of action and of the parties in the said two suits herein referred to; and she insists that

she be entitled to the same benefit of this part of her answer, *or* if the same were speci'ly set forth in plea or motioned on demur'er.

7th & 8th. As to 7th & 8th paragraphs in said cross-bills she is advised that it is not necessary for her to make answer. But she demands profi of the statement therein contained, che'rfully submits her right in the premises to this hon. court touching the legal questions involved in said paragraph; and this respondent having thus fully, as she
60 is advised and believes, answer'd the cross-bill of her said co-defendants, she prays she may hence be dismissed with her reasonable costs & expenses.

MARY J. WHEELER.

W. R. SMITH.
Solicitor for Mrs. Wheeler.

Mary J. Wheeler, being duly sworn, says upon oath that she has heard read this, her answer, and that she knows the contents thereof. That the said facts set forth as of her own to be true are true, and those stated upon information and belief she believes to be true.

MARY J. WHEELER.

Sworn to and subscribed before me this 30th day of Oct., 1879.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY,
Ass't Clk.

61 In the supreme court of the District of Columbia.

MICHAEL MCCORMICK
vs.
JOHN A. J. CRESWELL ET AL. } In equity. 6690.

Cross-bill.

The cross-bill of Mary J. Wheeler to the original bill of Michael McCormick, plaintiff, and to the cross-bill of said John A. J. Creswell et al., filed by leave of the court first had and obtained, respectfully shows as follows:

I. That on or about the 1st day of July, 1872, she was the owner in fee simple of the real estate, as described and set forth in the second paragraph of original bill in this cause, and that while so ow'ing she signed the promissory note described in the said second paragraph of said original bill for $2,000, payable to the order of R. W. Bruff, and also she signed the deed of trust to the said Ward to secure the payment of said note, as charged in said second paragraph of said original bill, the said note and deed of trust being the same as mentioned, also, in the second paragraph of the cross-bill of the said John A. J.
62 Creswell, Robt. Purvis, Robt. H. T. Leitpold; and she charges that the said note and said deed of trust were obtained from her fraudulently, in manner and under the circumstances as follows:

She avers that about the time the said note bears date W. T. Johnson, her son-in-law, requested her to sign the note, stating to her that he wished to accommodate Mr. Bruff (the said Richard W. Bruff) by letting him use the note as collateral security for some debt or debts that he, Bruff, then owed the bank, whereupon she signed the note, and the said W. T. Johnson took it; in the transaction she had no interview or understanding of any sort with said Bruff. She avers that at the time she signed said note she did not owe

said Bruff or said Johnson any money; and that she received no consideration whatever for said note from any person at that or at any other time. The said deed of trust was executed under the same circumstances at or about the same time; but she has no recollection of reading the deed or hearing it read, and she could not say what it contained, but admits that it was in some way connected with said
63 note to secure payment of the same; and she has no recollection of ever having acknowledged said before any officer. The whole matter had been done and arranged at the request, as aforesaid, of the said W. T. Johnson, who, as respondent is informed and believes and so charges, in some business matters was mixed up and embarrassed with said Bruff at the time, and of which claimant had no knowledge or information at the time of this transaction; and she further avers that at the time she was not in need of money, and that she would not have endangered her property upon a loan at usurious or legal interest if she had not been desceived and overreached in the manner hereinafter stated.

This complainant avers and charges that at the time of the execution of said note and the said deed of trust as aforesaid, the said Johnson represented to this complainant that there was no risk in the transaction, and no possibility of loss, inasmuch as the said Bruff was a perfectly honorable and just man; and that said Bruff had executed and
64 given to him, said Johnson, for her a blank deed of release with his, Bruff', signature attached, which said papers said Johnson exhibited to complainant, but did not read the same; and she avers that at the time she, complainant, understood the said blank deed to be a complete guarantee to her against any future liability on said note, and against any future loss or embarrassment to her said property by means of said deed of trust; and she charges that it was by and through the said representations of said Johnson to complainant as to the character of said deed of release, and his assurance that said blank deed would be a safe and complete guarantee to her against any liability or loss on account of said note and deed of trust, which said blank deed of release is attached to this complainant's answer to cross-bill of said commissioners, and is part of this record.

And she avers that she is informed by her counsel now, and believes, that said blank deed of release is and was of no value to her
65 whatever as a security or guarantee against her liability on said note and deed of trust, as she was led to believe it would be by said Johnson at the time; and she charges that the said note and the said deed of trust were obtained from her fraudulently by the said Johnson and the said Bruff, and were used by them and said company fraudulently, and against her will and wishes.

And she further avers that nowhere in their cross-bill have the said commissioners aver'ed or charged that they had ever paid a valuable consideration for the said note and deed, nor that they had come into possession of the same legitimately in the usual course of trade; and upon information and belief she avers that they never did pay any valuable consideration for said note and deed, nor did they come legitimately into possession of the same in the usual course of trade.

Complainant further says that she is informed and believes, and so states the fact to be, that the said company received said note as
66 collateral security for such other indebtedness; and so she avers that the claims to said note, as the assets of said company, by said complainant's commissioners is fraudulent; and she further avers that she is informed and believes, and so states the fact to be, that the

said commissioners have admitted that the said note was only held as collateral security for other indebtedness of said Bruff, and that the company had, and has, received payment in whole or in greater part of the said other indebtedness for which commissioners fraudulently claim said note and deed of trust as the assets of the said company; and complainant further avers that at the time of executing the note and deed of trust as aforesaid the said Johnson was her confidential adviser and manager of her business.

Complainant states that the said W. T. Johnson is a resident of the city of Washington, and, as she is informed and believes, is insolvent.

She is not advised of the residence, at present, of the said
67 Richard W. Bruff, but is informed and believes that he is somewhere in the State of New York, and that he is insolvent; and so she is advised that it is not necessary to make them parties defendents to this bill. But she respectfully submits that if they should be deemed necessary parties defendant she will apply to court for process to bring them in as such.

II. Complainant further avers that the said promissory note being found in the possession of the commissioners of the Freedman's Saving' & Trust Company, as they allege, the said commissioners, John A. J. Creswell and others, complainants in their aforesaid cross-bill, as they aver in said cross-bill, directed the said Wm. H. Ward, the trustee in the said deed of trust, to advertise and sell the said property, which, as they aver, he did accordingly, and that the sale was made on the 17th day of March, 1876, at which said sale the said commissioners of

the Freedman's Saving' & Trust Company, as they aver, being
68 the highest bidder, the property was knocked down to them for the sum of $1,400, and that they thus became the purchasers of the said property at said sale, and received from said Ward a deed of conveyance for the same, subject, as they aver, to certain incumbrances stated in said deed and set forth in the fo'rth paragraph of their cross-bill; and complainant avers that said commissioners claim to be the legal owners of the said property, and have filed their said cross-bill for the purpose, amongst other things, of quieting their title to the same and obtaining possession of said property; and in the sixth paragraph of their said cross-bill they aver that on about the 17th day of March, 1879, said Michael McCormick and this complainant "unlawfully combined and conspired together for the purpose of injuring and defrauding the creditors of the Freedman's Saving' & Trust Company, and unlawfully took possession of said property, and still hold and detain possession thereof from these commissioners;"

and complainant avers that the said commissioners, in their
69 said cross-bill in connection with this charge, in the sixth paragraph (all of which this complainant has denied in her answer to said sixth paragraph) have prayed in their third prayer, "that the said Mary J. Wheeler (this complainant) and the said Michael McCormick, either or both of them, may be required to deliver up possession of said property and to account for the rents and profits which they have or might have collected from the said property, and for the damages which have resulted or may result from the unlawful and forcible possession of said premises;" and complainant avers that notwithstanding the assertion of their claim in their said cross-bill by the said commissioners, and notwithstanding they thus invoke the jurisdiction of this court, nevertheless the said commissioners on, to wit, & at and after this court had assumed jurisdiction in this cause, impleaded this complainant in the law court for the same identical cause of ac-

70 tion as in the said sixth paragraph specified, in which said action at law said commissioners are plaintiffs and this complainant is defendant; and she avers that the said action at law is known and designated on the appeal calender of the circuit court of the District of of Columbia as No. 138, and is now pending, there as yet having been no verdict in said court, and to which this complainant has pleaded the general issue; and complainant refers to the declaration in the said law cause for the verification of the identity of the cause of action, &c., the parties, &*ct.*, and prays that it be taken as part of this bill.

III. Complainant avers that at the time they directed said trustee to advertise and sell said property as aforesaid, and at the time of the said sale, and said alleged purchase*d* by them, they, the said commissioners, as complainant is informed and believes and so charges, held the said note only as collateral security for certain other indebtedness of said Bruff as hereinabove stated, and had never paid a valuable consideration for the same. And she further, upon information
71 and belief, avers that the day of said sale was a stormy day and a semi-holiday; that only about eight persons were present, including boys, auctioneers, and bellman, at the sale, and no bids were made save the one on behalf of said company, which was less than one-fourth of the value of said property, and complainant is advised that said ought to be declared null & void; and she here refers to the original prayers of the original bill in this cause to show that one of the objects of this original suit was to have the said sale set aside and the said deed of conveyance annulled.

John A. J. Creswell, Robt. Purvis, and Robt. H. T. Leipold, commissioners, and Michael McCormick, are defendants to this cross-bill; and said commissioners and McCormick, are hereby requested to answer the averments in this cross-bill as fully as if the same were set forth in special interrogatories, but they need not answer upon oath; that is hereby waived.

Complainant prays—

1st. Subpœnae for said defendants.

72 2nd. That the said promissory note and the said deed of trust be declared fraudulent and void, and that the same be decreed to be delivered up to this complainant.

3rd. That the said sale made by said Ward under said deed of trust, be declared null and void, and the deed of conveyance under said sale be cancelled.

4th. That the said commissioners be restrained from prosecuting their said suit at law, 138 on the appeal docket of the circuit court, against complainant, until this court shall act upon and decide the merits of this case.

5th. That complainant may have such other, further, and general relief as the equities in her cause, as made by bill & pro*ff*, may authorize.

MARY J. WHEELER.

W. R. SMITH,
Solicitor for Mrs. Wheeler.

73 DISTRICT OF COLUMBIA,
Washington City:

Mary J. Wheeler, being duly sworn, says upon oath that she has heard the foregoing cross-bill read, and knows the contents thereof; that the facts therein stated to be true of her own knowledge are true,

and those stated to be upon information and belief she believes to be true.

MARY J. WHEELER.

Sworn to and subscribed before me on this 30th day of Oct., 1879.

R. J. MEIGS, *Clerk*,
By M. A. CLANCEY, *Ass't Clk.*

74 In the supreme court of the District of Columbia, October 29, 1879.

MICHAEL MCCORMICK, COMPLAINANT,
against
JOHN A. J. CRESWELL ET AL., DEFENDANT. } No. 6690. Equity docket.

The President of the United States, to John A. J. Creswell, Robert Purvis, and Robert H. T. Leipold, commissioners of the Freedman's Savings and Trust Company, defendant:

You are hereby commanded to appear in this court at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of Mary J. Wheeler's cross-bill, under pain of attachment and such other process of contempt as the court shall award.

Witness, D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk*, &c.,
By R. J. MEIGS, JR., *Ass't Clerk.*

Service accepted.
Nov. 7, '79.

E. TOTTEN,
For F. S. & T. Co.

Electro's.]

Restraining order.

Hearing on the prayer of said bill for injunction is fixed for Nov. 8th, 1879. Until then you are restrained from prosecuting the suit No. 138 on the appeal calendar docket of the circuit court as prayed.

By order of the court.

MAC ARTHUR, *Justice*, &c.

75 In the supreme court of the District of Columbia.

MICHAEL MCCORMICK
vs.
COM'RS F. S. & T. CO. ET AL. } Equity. No. 6690.

And now come the commissioners of the Freedman's Savings and Trust Company and join issue on the answer of Mary J. Wheeler to the cross-bill.

ENOCH TOTTEN,
Sol'r for Com'rs F. S. & T. Co.

76 In the supreme court of the District of Columbia.

MICHAEL MCCORMICK
vs.
JNO. A. J. CRESWELL ET AL. } Equity. No. 6690.

The answer of Jno. A. J. Creswell, Rob't Purvis, and Rob't H. T.

Leipold to the cross-bill of the defendant Mary J. Wheeler, shows as follows:

1st. They admit that the said Mary J. Wheeler was the owner of an equitable interest in the said property in these proceedings mentioned, but they aver that her interest was of no value.

Fu'ther answering the matters and things in the said paragraph mentioned, they say they have no knowledge or information upon which they can form a belief as to the circumstances under which the said Mary J. Wheeler executed and delivered the said promissory note and the deed of trust in these proceedings mentioned, and they submit to the court that it is immaterial, so far as the rights and interests of these respondents are concerned, w'ether the averments of the
77 said Mary J. Wheeler in the first paragraph of the said cross-bill are true or not.

2nd. Fu'ther answering the averments of the said cross-bill, they say, upon information and belief, that the said note, made by the said Mary J. Wheeler, came into the possession of the Freedman's Saving' & Trust Comp'y as collateral security for a note made by the said Holtzclaw & Bruff, for the sum of $3,000.00, and also the note of one C. A. Sherman, for the sum of $2,000.00, endorsed by the said Holtzclaw, Bruff, and that all the said promissory notes came into the hands of the Freedman's Saving' & Trust Company in the usual course of business.

The said property was sold under the deed of trust made by the said Mary J. Wheeler, and after exhausting all the other available collaterals deposited with the Freedman's Saving' & Trust Company there was due on the said note of Holtzclaw & Bruff of $1,231.15, and on the note of C. A. Sherman the sum of $930.75, with interest. After deducting the expenses of the sale of the said property and crediting the net proceeds of sale, less the taxes, there still remained due on the said note of Holtzclaw and Bruff the sum of $156.28, with interest, and the
78 said amount, with interest, remains due to this day.

It appears from the books of the Freedman's Saving' and Trust Co., in the possession of these respondents, that the said co. advanced on the note of the *note of the* said Holtzclaw & Bruff the sum of $3,000.00 in cash.

3rd. Fu'ther answering, these respondents say they have no knowledge as to whether or not the said Johnson and Bruff are insolvent, and, if deemed material, they ask for the proff of matters and things relating thereto.

It is time that these respondents instituted proceedings to recover possession of the said property from the said Mary J. Wheeler, and they are informed and believe, and thereupon aver, that not only is the said Mary J. Wheeler in possession of the said property, but that the said property is occupied, in conjunction with the said Mary J.
79 Wheeler, by the said William T. Johnson, her son-in-law, and that said proceeding' are now pending *in* appeal upon the law docket of this court, and remain undecided.

Fu'ther answering, they deny that they hold the note of the said Mary J. Wheeler without any consideration, and they deny the averments made in the said cross-bill for the purpose of showing that the said sale made by Wm. H. Ward was improperly conducted, and they again state that the said sale was fairly conducted in all things, and that the price bid for the said property was a reasonable & fair one.

And for a full and specific statement of the facts in the case, these respondents refer to their answer to the original bill in this cause, and to their cross-bill heretofore filed herein.

They also deny the charge made in the said cross-bill that these
80 respondents used the said promissory notes fraudulen'ly, and they aver that the said note belongs to the assets of the Freedman's Saving' & Trust Company. And having fully answered, &c.

JNO. A. J. CRESWELL,
ROBT. PURVIS,
ROBT. H. T. LEIPOLD,
Commissioners F. S. & T. Co.

ENOCH TOTTEN and R. H. T. LEIPOLD,
Respondents.

DISTRICT OF COLUMBIA,
County of Washington:

Robt. H. T. Leipold, being first duly sworn, deposes, and on his oath says that he has read the foregoing answer by them subscribed, and knows the contents thereof; that the facts therein stated upon information and belief he believes to be true, and that the facts therein stated upon personal knowledge he knows to be true.

ROBT. H. T. LEIPOLD.

Subscribed and sworn to before me on this 17th day of November, 1879.

D. RUTENLINK,
Not'y Public.

81 In the supreme court of the District of Columbia.

MICHAEL MCCORMICK
vs.
JOHN S. J. CRESWELL ET AL. } Equity. No. 6690.

Now comes the said Mary J. Wheeler, by her solicitor, W. R. Smith, and excepts to the answers of said John S. J. Creswell et al. to her cross-bill in the above entitled cause:

1st. Because the said answer to the first paragraph is insufficient and evasive in this: The said answer admits what the bill does not charge, to wit, that the said Wheeler "was the owner of an equitable interest in said property."

The bill charges that she was the owner in *in* fee simple.

II. The first paragraph of the bill avers that said commissioners never "paid any valuable consideration for said note," which the said answer neither admits nor denies.

III. The first paragraph of the bill avers that said company (F. S. & T. Co.) received said note as collateral security for "certain other indebtedness of said (R. W.) Bruff," meaning the other indebted-
82 ness of said Bruff, which he owed said co. at the time of the signing of said note, which said averment the said answer neither admits nor denies, but evades the same by stating that upon information and belief "the said note came into the possession of the F. S. & T. Co. as collateral security for a note made by the said Holtzclaugh & Bruff for the sum of $3,000; and also the note of one C. A. Sherman for the sum of $2,000, endorsed by the said Holtzclaugh & Bruff."

IV. The averment in the third paragraph of said answer that "not only is the said Mary J. Wheeler in possession of said property, but that the said property is occupied in conjunction with said Mary J.

Wheeler by the said W. T. Johnson, her son-in-law," is impertinent, having no connection whatever with the merits of this cause.

W. R. SMITH,
Sol. for Mrs. Wheeler.

83 In the supreme court of the District of Columbia.

MICHAEL MCCORMICK
vs.
JOHN A. J. CRESWELL ET AL. } Equity.

The seperate answer of Mary J. Wheeler to the original bill of Michael McCormick, in the above-entitled cause, resp'tfully shows:

I. She admits the facts stated in the first paragraph of said bill.

II. She admits that she was the owner in fee simple of the property described in the second paragraph, and she admits that at or about the time named in said paragraph she signed the note to Bruff, as therein set forth, and that she also at or about the same time signed the deed of trust to said Ward as therein set forth, but she avers that the said note and the said deed of trust were obtained from her without consideration, and fraudulently, as she has set forth in her answer to the second paragraph of the cross-bill of her codefendants, said commissioners of the Freedman's Saving' and Trust Co., the said John A. J. Creswell et al., and she hereby adopts as a part of this her answer to this the second paragraph of said McCormick's original
84 bill of complaint, the said answer which she made and filed to the said second paragraph of the said cross-bill of the said commissioners of the Freedman's Savings and Trust Company, and prays that the same may be considered as if herein transcribed and made a part of this her answer to this the second paragraph of the said original bill.

Fu'ther answering the said second paragraph of the said original bill, she says that she has no accurate personal knowledge of what dispositions said Bruff made of said note & deed, but from information and belief she admits that they were disposed of as stated in said original bill, and she admits the recording of said deed of trust as stated in said original bill.

III, IV. She admits the third and fourth paragraph of said original bill, the same being subject, however, to certain credits for household furniture and certain rents of the said real estate received by said McCormick while in possession of said premises, the amount and value of which are unknown to this defendant, and for the
85 adjustment of which she submits that the same should be a reference to the auditor for an account upon testimony.

V. She has no accurate personal knowledge of the facts stated in the fifth paragraph of said original bill, but from information and belief she admits the same, and leaves the legal conclusions thereof to the decision of the court.

Having answered said original bill as fully as she is advised it is necessary for her to answer the same, she prays to be hence dismissed with her reasonable costs.

MARY J. WHEELER.

W. R. SMITH,
Solicitor for Wheeler.

I, Mary J. Wheeler, do solemnly swear that I have heard the aforesaid answer, by me subscribed, read, and know the contents thereof,

and that the facts therein stated as of my own knowledge are true, and those stated on information and belief I believe to be true.

MARY J. WHEELER.

Sworn to before me Nov. 29th, 1879.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY,
Ass't Clerk.

86 In the supreme court of the District of Columbia.

MICHAEL MCCORMICK
vs.
JOHN A. J. CRESWELL AND OTHERS. } Equity. No. 6690.

The petition of John A. J. Creswell, Robert Purvis, and Robert H. T. Leipold, commissioners of the Freedman's Savings and Trust Company, respectfully shows:

First. That the premises involved in this controversy are now occupied by the defendant Mary J. Wheeler and other members of her family, and that the said Mary J. Wheeler is insolvent and irresponsible, as your petitioners are informed and believe.

Second. That the rental value of the said property is from thirty to fifty dollars a month. That this suit has been pending since the fifteenth day of March, 1879, and that no testimony has yet been taken.

That tedious delays have been interposed for one reason and another, and that your petitioners have reason to, and do, believe that the object of the litigation in this cause, on the part of at least
87 several of the parties, is to detain possession of the premises without paying any rent therefor.

And your petitioners say that they deem it to be their duty to ask that such orders may be made by the court as will protect the interests of the creditors of the Freedman's Savings and Trust Company, and they beg leave to refer in this application to the pleadings and exhibits in this cause; and they pray as follows, to wit:

1. That a receiver may be appointed to take charge of the said premises pending the litigation, and to collect the rents therefrom, and to return the same into court, to be disposed of according to law.

2. That they may have such other and further relief as may be necessary and proper in the premises, to the end that the interests of the creditors of the Freedman's Savings and Trust Company may be cared for.

JOHN A. J. CRESWELL,
ROBERT PURVIS,
ROBERT H. T. LEIPOLD,
Com'rs of the F. S. & T. Co.

ENOCH TOTTEN,
R. H. T. LEIPOLD,
For Petitioners.

88 DISTRICT OF COLUMBIA,
County of Washington, ss:

Robert H. T. Leipold, being first duly sworn, deposes and on his oath says that he has read the foregoing petition by him subscribed and knows the contents thereof; that the facts therein stated upon

personal knowledge he knows to be true, and that the facts therein stated upon information and belief he believes to be true.

ROBERT H. T. LEIPOLD.

Subscribed and sworn to before me this 22nd day of December, 1879.
[NOTARIAL SEAL.] D. RITTENHOUSE,
Notary Public.

89 In the supreme court of the District of Columbia.

McCORMICK *vs.* CRESWELL ET AL. } Equity. 6690.

The answer of Mrs. Mary J. Wheeler to the petition of her codefendants' the petitioners.

1st. She admits that she is in the occupation of the premises.

2nd. She admits that she is insolvent, but she insists that she has been made so chiefly by the oppression and unlawful acts of these petitioners in their efforts to drive her from her domicil. And she avers that said petitioners are also insolvent, and she avers that they are not entitled to a receiver either under their petition or by the facts developed in the pleadings.

3. She admits the rental value of the property and the pendency of the suit as stated in the 2nd paragraph of said petition, and that there has been no testimony as yet taken, but she denies that there have been any tedious delays interposed to the taking of the testimony; on the contrary she is informed and believes, and so states, that the
90 delays that have been made are not exclusively chargeable to her or her solicitor. She is advised that the case, in some respects, is not yet, and has not been at issue, and she denies that the object of the litigation is to detain possession of the premises without paying rent; and she avers that these petitioners have their suit at law now pending against her in the law court, involving said premises, and in that suit it having been certified to the supreme court of the District of Columbia, from a magistrate's court, she has given and executed a bond or bonds such as are required by law in such cases, with ample security covering all the rents that may be found due against her in this controversy, and she refers to said suit at law and the proceedings therein as a part of this her answer to petitioners.

MRS. M. J. WHEELER.

Sworn to & subscribed before me this 27th day of Dec., 1879.
R. J. MEIGS, *Clk*,
By R. J. MEIGS, JR., *Ass't*.

91 In the supreme court of the District of Columbia.

MICHAEL McCORMICK *vs.* JOHN A. J. CRESWELL & OTHERS. } Equity. No. 6690.

The defendants John A. J. Creswell, Robert Purvis, and Robert H. T. Leipold, commissioners of the Freedman's Savings & Trust Company, for answer to the amendment to the cross-bill of the defendant Mary J. Wheeler, say as follows:

They admit that after the 17th day of March, 1876, they took posses-

sion of the said premises and retained possession thereof until possession thereof was taken by the said Mary J. Wheeler through fraud, and that they have collected for rents out of the said property, from the time ot obtaining possession thereof until the time of the unlawful entering thereon by the said Mary J. Wheeler, the sum of $1,344.71, and that they have disbursed on account of insurance, taxes, repairs, &c., the sum of $488.69, which should be deducted from the said amount of $1,344.71; that said sum of $1,344.71 is all the money they have ever collected from
92 the said property for rents; the said sum of $488.60, disbursed as aforesaid, is in addition to the other disbursements mentioned in their answer to the cross-bill heretofore filed in this cause for the purpose of paying the expenses of said sale and of buying in certain other prior incumbrances. But these commissioners deny that the said Mary J. Wheeler has any right to claim or receive any part of the said rents or to occupy the said premises.

And having fully answered, &c.

R. H. T. LEIPOLD,
JOHN A. J. CRESWELL,
ROBERT PURVIS,
Commissioners F. S. & T. Co.

ENOCH TOTTEN,
For Com'rs.

DISTRICT OF COLUMBIA,
County of Washington, ss:

I, Robert H. T. Leipold, being first duly sworn, do depose and on my oath say that I have read the foregoing answer by me subscribed, and know the contents thereof; that the facts therein stated upon information and belief I believe to be true, and that the facts therein stated upon personal knowledge I know to be true.

ROBERT H. T. LEIPOLD.

Subscribed and sworn to before me this 19th day of January, 1880.
[SEAL.] D. RITTENHOUSE,
Notary Public.

93 In the supreme court of the District of Columbia.

MICHAEL MCCORMICK
vs.
JOHN A. J. CRESWELL ET AL. } 6690. Eq.

This cause having come on to be heard on the exceptions of the defendant Wheeler to the answer of the commissioners of the Freedman's Savings and Trust Company to the cross-bill, and counsel having been heard, it is this 27 day of April, 1880, ordered that said exceptions be, and they hereby are, overruled, and the said Wheeler is hereby ordered to file her replication instanter. And it is further ordered that the case stand for hearing in its place upon the trial calendar.

By the court.

D. K. CARTTER,
Ch'f Just.

94 MICHAEL MCCORMICK
vs.
F. S. & T. Co. ET AL. } 6690.

Now comes the defendant Mary J. Wheeler, codefendant, and joins issue with her codefendants on their answer to her cross-bill.

W. R. SMITH,
Sol. for Mrs. Wheeler.

95 In the supreme court of the District of Columbia.

MICHAEL MCCORMICK
vs
JOHN A. J. CRESWELL AND OTHERS, COMMISSIONERS of the Freedman's Savings and Trust Company, and Mary J. Wheeler. } Equity. No. 6690.

This cause having come on to be heard at this term, on the pleadings and testimony, and having been argued by counsel, it is, upon consideration thereof, this 10th day of July, 1880, ordered, adjudged, and decreed as follows:

That the complainant, Michael McCormick, or the failing, the defendant Mary J. Wheeler, have the right to redeem the property mentioned and described in the proceedings, upon paying to the commissioners of the Free'man's Savings and Trust Company the balance due on the promissory note mentioned and described in the proceedings, made by the firm of Holzclaw & Bruff, for the sum of $3,000.00, bearing date on the 13th day of July, 1872, to the order of the Freedman's Savings and Trust Company, and interest to date, (the credit of proceeds of sale on said note to be disregarded;) also the amount of

96 a certain promissory note of the said Richard W. Bruff, bearing date October 3d, 1871, for the sum of $5,000.00, payable five years after date, to the order of Albert J. Myer, with interest at the rate of ten per cent. per annum to maturity, and six per cent. per annum from its maturity to date, less the amount paid on account of interest by said McCormick and said Wheeler, (which said note was taken up and paid by the commissioners of the Freedman's Savings and Trust Company;) and also the various amounts paid by the said commissioners of the Freedman's Savings and Trust Company for taxes, insurance, repairs and expenses of collecting rents—less the amount of rents collected by the said commissioners. And that this cause is hereby referred to the auditor of the court, to compute the amount due upon the basis of this decree; and he is hereby required to make his report from the evidence in the cause, and to file his report in ten days from this date. After the coming in of such report, either party shall have ten days, and not more, to file exceptions, and in the event of exceptions being filed, either party may call them up for argument and disposition on two days' notice.

97 It is further ordered, adjudged, and decreed that if the said McCormick or the said Wheeler shall pay the amount found to be payable by the auditor, within thirty days from the date of confirmation of the auditor's report, the commissioners of the Freedman's Savings and Trust Company shall thereupon, upon such payment to them, reconvey the said property by a deed, good and sufficient in the law, to the party so paying the said amount.

It is further ordered, adjudged, and decreed that if the said parties

or either of them shall fail for any reason to make such payment within said thirty days, as hereinbefore provided, then and in that case the said sale to said commissioners, by W. H. Ward, trustee, mentioned in the proceedings herein, shall stand in all things ratified and confirmed, and the said Michael McCormick, and the said Mary J. Wheeler shall immediately surrender the quiet possession of the said premises to the commissioners of the Freedman's Savings and Trust Company, and the necessary writ to put them in possession shall be issued for that purpose; and that the said McCormick and the said Wheeler, both
98 and each of them, shall be and they are hereby restrained from interfering in anywise with the quiet possession of said property by said commissioners or their assigns.

It is further ordered, adjudged, and decreed that, in the event of the failure to redeem the said property as hereinbefore provided, this cause shall again be referred to the auditor, to ascertain and report to this court the amount of rents collected by the said complainant, McCormick, and the said defendant Mary J. Wheeler, or either of them, and to ascertain and report how much, if any, the said McCormick or the said Wheeler should be required to pay to the commissioners on account of rents which have been, or may hereafter be, or which should have been, collected out of the said property, or for the use and occupation and wear and tear thereof,

It is further ordered, adjudged, and decreed, that the costs of this suit shall be paid by the complainant, the said Michael McCormick.

W. S. COX, *Justice.*

M 6, page 140.

99 In the supreme court of the District of Columbia.

MICHAEL MCCORMICK *vs.* JOHN A. J. CRESSWELL ET AL. } No. 6690. Eq.

Auditor's report.

This cause is referred to me to compute the amount due upon the basis of the decree of the 10th of July, 1880. I am required to make my report from the evidence in the case and to file it within ten days from the date of the decree..

A statement of account made upon the basis of the decree, and from the testimony and exhibits in the cause, will be found in schedule "A" of this report.

In making up the amounts of the credits to be deducted from the indebtedness represented by the notes in question, I have not included the expenses of the sale made by W. H. Ward, trustee, they not being specified in the directions of the decree.

100 In stating the amount I have calculated interest to the 20th day of July, 1880.

JAS. G. PAYN, *Auditor.*

JULY 16, 1880.
Fee, $20.

101 SCHEDULE A.

Statement of account, as directed by the decree of July 10th, 1880.

Note of Holtzclaw and Bruff, dated July 13th, 1872, payable in 30

days to the order of the Freedman's Savings and Trust Company, with interest at the rate of 10 % per annum.

Principle of note			$3,000
Interest from August 15th, 1872, to Dec. 9, 1872			57 00
Total, 1872			$3,057 00
1872.			
Dec.	9th.	Payment of Gulick note	403 67
			$2,653 00
1873.			
January	8th.	Interest to this date	12 83
			$2,666 16
		Payment	407
			$2,259 16
Feb.	7th.	Interest	10 92
			$2,270 08
		Payment	410 33
			$1,859 75
March	7th.	Interest	9 30
			$1,869 05
		Payment	413 69
			$1,455 36

(Over)

102 SCHEDULE A.—Continued.

		To amount forward	$1,455 36
1873.			
April	9th.	Interest	6 80
			$1,462 16
		Payment	417 00
			$1,045 16
		Interest to July 20th, 1880	456 56
			$1,501 72
		Note of Richard W. Bruff, dated Oct. 3rd, 1871, payable to the order of Albert J. Myre in five years, with interest at the rate of 8 % "*per cent.*" per annum	$5,000 ⁄⁄
		Interest to Oct. 3rd, 1876, at 10 %	$2,500
		Less payments by R. W. Johnson and M. McCormick	1,475
			$1,025 00

Interest to July 20th, 1880, at 6 % per annum	$1,138 33
	$2,163 33
	$7,163 33
Total balance of bank note, principle and interest	$8,665 05

(Over.)

103 SCHEDULE A.—Continued.

Amount of debits forward	$8,665 05

CR.

By amount of rents collected and received from the property from March 17th, 1876, to M'rch 17th, 1879		$1,344 71
Less:		
Taxes, insurance, cost of repairs, and collection of rents prior to date of sale	488 69	
Taxes and assessments paid subsequent to date of sale	191 22	
	$679 91	
Balance to be credited	664 80	
Amount remaining due upon the two notes, as of July 20th, 1880		$8,000 25

104 In the supreme court of the District of Columbia.

MICHAEL MCCORMICK *vs.* JOHN A. J. CRESWELL ET AL. } In equity. No. 6690.

Exception by plaintiff to report of the auditor.

The plaintiff, Michael McCormick, makes and submits the following exception to the report of Jas. G. Payne, auditor, filed July 20th, A. D. 1880, in this cause, pursuant to the decree rendered by the equity term, July 10, 1880:

1. That the said auditor was without authority in the premises, the said plaintiff having taken an appeal prior to the making and filing of said report.

2. That said auditor has not followed the evidence on file in said cause, but has made a report in conflict therewith, and not supported by said evidence.

3. That the said auditor, in his said report, finds an excessive amount due, as the note of $3,000.00 given by Holtzclaw and Bruff was largely

105 in excess of the amount shown by the testimony on file in said cause.

4. That said auditor, in his said report, finds the sum of $1,501.72 due in respect to the $2,000.00 real estate note of Mary J. Wheeler, when the testimony shows that a proper application of credits arising from the additional collateral securities held by the said Freedman's Bank in respect to the said note of $3,000.00 of Holtzclaw and Bruff would have extinguished the same and released wholly any alleged lien of said Freedman's Bank upon said Mary J. Wheeler's note of $2,000.00.

5. That said auditor, in his said report, charges against the Freedman's Bank, as rents collected from the real property mentioned in the bill of complaint, the sum of $1,344.71 only, and improperly and unjustly allows the said bank credits for expenses in collecting the same, whereas, under said testimony and the rules of law, said auditor should have charged against said bank the reasonable rental value of said

106 property whilst in the possession of said Freedman's Bank, as shown by the testimony, amounting to $2,340.00, instead of $1,344.71.

6. That under the pleadings in said cause and the testimony on file, the said auditor should have found nothing due from said plaintiff, nor from the said Mary J. Wheeler, nor anything due on said real property, in respect to the note of $5,000.00 made by Richard W. Bruff October 3, 1871, payable to the order of Albert J. Myers; and said plaintiff insists that the amount reported by said auditor in schedule A, attached to said report, touching said note for $5,000.00 is wholly unjust and unsupported by the testimony, and that said auditor should have reported nothing due thereon from said plaintiff or from the said Mary J. Wheeler, and that said property was not affected thereby.

Wherefore, the said plaintiff excepts to the report of the said auditor as a whole and in the particular matters aforesaid, and humbly appeals therefrom to the judgment of this honorable court.

ROBERT CHRISTY,
Sol. for Michael McCormick, Plaintiff.

107 *Mr. Leipold's statement of account, July* 8, 1880.

Michael McCormick et al. to the commissioners of the F. S. & T. Co., Dr.

To ballance due on note of Holtzclaw & Bruff, March 17, 1876		$948 31	
" interest @ 6 % to March 17, 1876		282 84	
" " on $948.31 @ % from March 17, 1876, to July 8, '80, 4 y'rs, 3 mo., 20 d		244 94	
" taxes paid at time of sale:			
Special improvement	$146 10		
General ½ for '75 & '76 and penalties	45 12		
		191 22	
			1,667 31
" amount of Bruff's note, dated Oct. 3, '71, to order of Albert J. Myer, pay 5 years after date, with interest at 10 %		5,000 00	
" interest from Oct. 3, '71, to Oct. 3, '76, @ 10 %, 5 y'rs		2,500 00	
" interest from Oct. 3, '76, to July 8, '80, @ 6 %, 3 y'rs, 9 mo., 5 d		1,129 18	
		8,629 18	

Less amount paid by Johnson & McCormick. (See p. 175 of test'y)	1,475 00	
		7,154 18
Total debits		$8,821 49

108 CR.

By collections on a/c of rent. (See p. 12 test'y & statement annexed)	$1,344 71	
Less taxes, insurance, repairs, & expenses paid by the com's F. S. & T. Co. (See p. 12 test'y & statement annexed)	488 69	
		856 02
Total credits		856 02
Total debits		$8,821 49
" credits		856 02
Balance due July 8, 1880, under decree		$7,965 47

109 In the supreme court of the District of Columbia, in general term, Thursday, Feb. 17, 1881.

MICHAEL MCCORMICK, COMPLAINANT,
vs.
JOHN A. J. CRESWELL, ROBERT PURVIS, ROBERT H. T. Leipold, commissioners of the Freedman's Savings & Trust Company, Mary J. Wheeler, Wm. H. Ward, jr., defendants. } In equity. No. 6690.

This cause came on to be heard upon the defendant Wheeler's appeal from the decree of the special term of July 10, 1880, and was argued by Mr. Christy in support of the said appeal; whereupon, upon consideration thereof, it is by the court here, this 17th day of February, 1881, ordered, adjudged, and decreed that the said decree in the special term of July 10, 1880, be, and the same is hereby, affirmed with costs; and the case is remanded to the special term for further proceedings therein according to law.

And from this decree the complainant prays an appeal to the Supreme Court of the United States, and the same is allowed.

110 In the supreme court of the District of Columbia.

MICHAEL MCCORMICK
vs.
THE FREEDMAN'S SAVINGS AND TRUST COMpany et al. } Eq. 6690.

This cause coming on to be heard on the exceptions filed to the report of the auditor, and it appearing that counsel for the defendant Wheeler and complainant were duly notified of this hearing, it is this

19th day of February, 1881, on motion of Enoch Totten, sol'r for the commissioners of the Freedman's Savings and Trust Company, ordered and adjudged that the said exceptions be, and they are hereby, overruled, and the said report of the auditor is hereby ratified and confirmed.

W. S. COX, *J.*

This order is suspended until further order.

W. S. COX, *J.*

111 In the supreme court of the District of Columbia.

MICHAEL MCCORMICK
vs.
THE FREEDMAN'S SAVINGS AND TRUST COMPANY et al. } In equity. No. 6690.

To the Freedman's Savings and Trust Co., defendant:

You are hereby notified that on the 30th inst. the said plaintiff will apply to the justice holding the equity term of said court, at the hour of 11 o'clock a. m., or as soon thereafter as counsel can be heard, to approve a bond for appeal of said cause to the general term.

The names of the sureties that will be tendered are Thomas McCormick, 654 B st., SE., and Lawrence Cavanaugh, cor. 6th and A st., NE., in the city of Washington, in said District of Columbia.

ROBERT CHRISTY,
Att'y for McCormick.

WASHINGTON, D. C., *July 20th*, 1880.

Service of within notice acknowledged and affidavit of service waived.

ENOCH TOTTEN,
Sol. for Freedman's Savings and Trust Company,
P'r B.

112 DISTRICT OF COLUMBIA, *ss:*

I, Mary J. Wheeler, on oath, say that when I took possession of house No. 136 Penn. avenue, East Washington, D. C., on the 17th day of March, 1879, I found that all the gas-fixtures had been taken away, and they have never been returned.

I also found that the range in the kitchen had all the inside burned out, and all the water-pipes in the range were burned out, and the hot-water boiler had frozen up and bursted and become worthless, and these are still in the same condition.

The water-pipes leading to the bath-room were bursted, and some of them, together with the spiggots, had been removed, and they are still in the same condition.

The plastering and the painting being in great need of repair, and the general condition of the house being such that it will not rent for more than one-half of what it would if it was in a good tenantable condition.

This house is located on square No. 730, which is one of the
113 squares selected as the site for the new National Library building, and affiant is informed and verily believes that it will be taken by the government for that purpose within one year, and that

the purchase-money would in that event have to be paid into court, to await the final termination of this suit.

MARY J. WHEELER.

Subscribed and sworn to before me this 9th day of March, A. D. 1881.
[NOTARIAL SEAL.] FRED. A. GRANT,
Notary Public.

114 DISTRICT OF COLUMBIA, *ss:*

I, B. O. Greenwell, on oath say that I am a carpenter and builder, and have resided in Washington, D. C., over forty years.

That I know the premises known as No. 136 Penn. avenue east, in said city, and have recently examined its condition, and find that it is not in a good tenantable condition; that the range is all gone, except the exterior portion, the hot-water pipes also being burned out; the water back gone, and the hot-water boiler bursted and useless, and the pipes leading up to the bath-room being bursted and so out of repair that the bath-room is almost useless, and from the former leakage of those pipes the plastering has been greatly injured.

The plastering throughout the house and the painting not having been repaired since the house was built, about ten years ago, is in great need of repair.

B. O. GREENWELL.

Subscribed and sworn to before me this 9th day of March, A. D. 1881.
[NOTARY SEAL.] FRED. A. GRANT,
Notary Public.

115 DISTRICT OF COLUMBIA, *ss:*

I, Fred. A. Grant, on oath say that I am a real-estate agent, of the firm of F. A. Grant & Co., located at the corner of 3rd and East Capitol streets, on Capitol Hill.

That I am well acquainted with the premises No. 136 Penn. avenue east, and knew its condition when Mrs. Wheeler took possession on March 17, 1879; that I have read the foregoing affidavit of Mrs. Wheeler, and know that the statements therein made are true.

That my business is selling and renting houses on Capitol Hill, and that I consider the present rental value of said premises in its present condition is about thirty dollars per month.

FRED. A. GRANT.

Subscribed and sworn to before me this 9th day of March, A. D. 1881.
[NOTARY SEAL.] W. T. JOHNSON,
Notary Public.

116 In the supreme court of the District of Columbia.

MICHAEL MCCORMICK
vs.
JOHN A. J. CRESWELL, ROBERT T. PURVIS, Robert H. T. Leipold, commissioners F. S. & T. Co., and Mary J. Wheeler. } In equity. No. 6690.

I, Michael McCormick, the complainant in the foregoing action, having taken an appeal from the supreme court of the District of Columbia to the United States Supreme Court, I will, in the said supreme court of the District of Columbia, on Wednesday, March 9th, 1881, at 10 o'clock a. m., or as soon thereafter as the court will give attention

thereto, perfect the appeal bond required by law in such cases by giving upon said appeal bond as security Thomas McCormick, residing at No. 654 B st., SE., and Lawrence Cavanaugh, corner 6th and A st., NE., both of Washington, D. C.

MICHAEL McCORMICK.

To Hon. J. J. KNOX,
Commissioner F. S. & T. Co.

117 In the supreme court of the District of Columbia.

MICHAEL McCORMICK
vs.
MARY J. WHEELER ET AL. } Equity. No. 6690.

And now comes the Solicitor of the Treasury, represented by Enoch Totten, esq., and suggests the appointment of John Jay Knox, Comptroller of the Currency, as commissioner, in lieu of the said John A. J. Creswell, Robert Purvis, and Robert H. T. Leipold, and asks due entry of the change on the docket of the court in the above-entitled cause.

And, upon motion, it is, this 3rd day of May, 1881, ordered that the said entry as prayed for be made upon the docket of the court.

By the court:

A. WYLIE.

118 In the supreme court of the District of Columbia.

MICHAEL McCORMICK
vs.
THE FREEDMAN'S SAVINGS & TRUST COMPANY & others.

Hon. JOHN J. KNOX,
Commissioner of the Freedman's Savings & Trust Company:

Please take notice that on Tuesday, the 10th day of May, A. D. 1881, the complainant in the said court in general term, at the opening of said court on that day, or as soon thereafter as counsel may be heard for that purpose, will move the said court, upon the affidavits hereto attached, for an order in said cause approving the appeal bond tendered to the court by the complainant on the 9th day of March, 1881, and that such order of approval be made as of the said 9th day of March, 1881.

ROBERT CHRISTY,
Sol. for Complainant.

JOHN J. WEED,
Of Counsel.

119 DISTRICT OF COLUMBIA, *ss:*

Being sworn, R. J. Meigs, jr., says that one day in March, 1881, Albert Grant, on behalf of Michael McCormick, complainant in equity cause 6690, handed him a bond of appeal to Supreme Court United States, to be filed; that immediately he took said bond to general term court-room for approval, when, meeting Enoch Totten, solicitor for defendant showed same to him, when he, Totten, wrote upon it in pencil that he had examined into solvency or sufficiency of sureties thereon and found them not good, or words to that effect; that said bond has since been mislaid or lost—at any rate affiant is not able to find it.

R. J. MEIGS, JR.

Subscribed and sworn to before me, May 3, 1881.
[SEAL OF COURT.] R. J. MEIGS, *Clerk*,
By J. JAY CAMP,
Ass't Clk.

120 In the supreme court of the District of Columbia.

MICHAEL MCCORMICK
vs.
FREEDMAN'S SAVINGS AND TRUST COMPANY et al. } In equity. No. 6690.

Albert Grant, on oath says: I was present when the notice was served upon J. J. Knox, commissioner of the F. S. & T. Co., on the 7th day of March, 1881, giving the names and address of the sureties to be upon the plaintiff's appeal bond to the United States Supreme Court, and said notice stated that on the 9th day of March, 1881, the plaintiff and sureties would appear in court to perfect said appeal bond.

I was in court with plaintiff and his counsel and sureties at the said appointed time, and Enoch Totten appeared for said F. S. & T. Co.

The court fixed the bond at $6,000, and plaintiff's counsel was
121 about to have the plaintiff and sureties justify as to their sufficiency, when said Totten inquired of affiant and plaintiff as to the amount to which they could justify, and plaintiff replied from $20,000 to $25,000, over and above all liens upon their property.

Reference was then made to the fact that the sureties were the same persons who had been examined by him in open court, and accepted by the court upon the appeal bond in this suit to the general term.

Said Totten then remarked that he presumed they would be sufficient, and turned to the court and remarked to the court that he would not trouble the court to examine them.

He said that the bond could be made out and filed; whereupon
122 counsel for plaintiff immediately, and in the presence of the court, proceeded to fill up the appeal bond, and handed it to affiant, and affiant afterwards had the plaintiff and sureties execute it, and affiant afterwards went to the office of the clerk of the court and delivered the appeal bond, duly executed, to Return J. Meigs, jr., assistant clerk of the court, and directed him to file the same.

ALBERT GRANT.

Subscribed and sworn to before me this 6th day of May, A. D. 1881.
R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
Ass't Clerk.

123 In the supreme court of the District of Columbia.

MICHAEL MCCORMICK
vs.
THE FREEDMAN'S SAVINGS AND TRUST COMPANY & others. } In equity. No. 6690.

John J. Weed, being duly sworn, on his oath states that he was employed by the complainant to represent him in the court in general term at the time the complainant appeared in said court with his sureties, for the purpose of giving an appeal bond for the prosecution of

his appeal from the decree of said court to the Supreme Court of the United States.

The court having fixed the said bond at six thousand dollars, affiant filled up such bond on one of the blank forms furnished by the clerk of this court for that purpose, and inserted in said bond the names of the complainant, as principal, and Lawrence Cavanaugh and Thomas McCormick, as sureties; and affiant states that the said complainant and the said sureties were at that time present in court and ready to submit themselves to examination by the court in regard to their financial responsibility to answer to the conditions of said bond.

124 Affiant further states that at that time Mr. Totten, the solicitor for the said Freedman's Savings and Trust Company, was present and answered to said notice in regard to giving such appeal bond.

That said Totten remarked, when he was informed of the names of said sureties, *remarked* that he would not trouble the court with the matter, and that he supposed said sureties were sufficient.

Affiant further states that he has never seen said appeal bond since it was filled up by him and handed to the complainant at the time herein referred to, in the court in general term, and affiant now thinks that said time was on or about March 9th, 1881.

JOHN J. WEED.

Sworn to and subscribed before me May 6, 1881.

R. J. MEIGS, *Clerk.*

125 In the supreme court of the District of Columbia.

MICHAEL MCCORMICK
vs.
FREEDMAN'S SAVINGS AND TRUST COMPANY and Mary J. Wheeler.

I, Michael McCormick, the foregoing plaintiff, on oath, state that I, together with my counsel and my proposed sureties upon my appeal bond, viz, Lawrence Cavanaugh and Thomas McCormick, upon March 9th, 1881, appeared in court upon the day designated in the notice on file for the purpose of giving said appeal bond, and Enoch Totten appeared for the Freedman's Savings and Trust Company, and said Totten asked us in how much we could justify, and we said in from $20,000.00 to $25,000.00.

The court fixed the bond at $6,000.00, and said Totten said that he would not trouble the court to examine them.

The bond was afterwards executed by myself and said sureties, and delivered to Albert Grant to deposit with the clerk of the court.

M. McCORMICK.

Sworn to before me May 5, 1881.

R. J. MEIGS, *Clerk.*
By M. A. CLANCY,
Ass't Clk.

126 In the supreme court of the District of Columbia. In general term.

MICHAEL MCCORMICK
vs.
THE FREEDMAN'S SAVINGS & TRUST COMPANY, et al.

The complainant moves the court for an order herein approving the

appeal-bond executed by the said complainant, for the prosecution of an appeal to the Supreme Court of the United States; and that such approval shall be entered as of the 9th day of March, 1881.

JOHN J. WEED,
Of Counsel for Complainant.

127 In the supreme court of the District of Columbia.

MICHAEL MCCORMICK
vs.
THE FREEDMAN'S SAVINGS & TRUST CO. and others. } In equity. No. 6690.

To ENOCH TOTTEN, Esq.,
Solicitor for the Freedman's Savings and Trust Company:

Please take notice that on Monday, the 5th day of June, 1881, at 2 o'clock p. m. of the said day, at the conference room of the United States Supreme Court, we shall apply to Mr. Justice Harlan, one of the justices of the Supreme Court of the United States, for an order approving an appeal bond and for a supersedeas in the above-entitled cause.

ROBERT CHRISTY,
JOHN J. WEED,
Sol'rs for Complainant.

128 In the supreme court of the District of Columbia.

MICHAEL MCCORMICK
vs.
THE FREEDMAN'S SAVINGS AND TRUST COMpany JOHN J. KNOX, commissioner of the Freedman's Savings & Trust Company; and Mary J. Wheeler.

To the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States:

Your petitioner, Michael McCormick, the complainant in the above-entitled cause, respectfully represents as follows:

1. That on the 17th day of March, A. D. 1879, your petitioner filed in said court his bill of complaint against the said Freedman's *and* Savings & Trust Company, John A. J. Cresswell, Robert Purvis, and
129 Robert H. T. Leipold, the then commissioner' of the said company, and Mary J. Wheeler, praying to set aside the sale of the premises described in the said bill, and praying also for leave to redeem said premises from such sale upon the payment of the lien held thereon by the said Freedman's Savings & Trust Company.

2. That subsequent to the filing of the said bill answers were filed thereto by each of the said respondents, and cross-bill' were filed therein by said commissioners of the said Freedman's Savings & Trust Company, and by the said Mary J. Wheeler, and answers to said cross-bills were filed by the respective respondents named therein, and replications to said answers filed by the respective parties entitled to file the same, and upon the issues thus made testimony was taken, both by the complainant and the said respondents, and upon such testimony your petitioner believes the right and justice of the said cause
130 were clearly with your petitioner and the said Mary J. Wheeler.

3. That on the 10th day of July, 1880, a decree was entered in said

his appeal from the decree of said court to the Supreme Court of the United States.

The court having fixed the said bond at six thousand dollars, affiant filled up such bond on one of the blank forms furnished by the clerk of this court for that purpose, and inserted in said bond the names of the complainant, as principal, and Lawrence Cavanaugh and Thomas McCormick, as sureties; and affiant states that the said complainant and the said sureties were at that time present in court and ready to submit themselves to examination by the court in regard to their financial responsibility to answer to the conditions of said bond.

124 Affiant further states that at that time Mr. Totten, the solicitor for the said Freedman's Savings and Trust Company, was present and answered to said notice in regard to giving such appeal bond.

That said Totten remarked, when he was informed of the names of said sureties, *remarked* that he would not trouble the court with the matter, and that he supposed said sureties were sufficient.

Affiant further states that he has never seen said appeal bond since it was filled up by him and handed to the complainant at the time herein referred to, in the court in general term, and affiant now thinks that said time was on or about March 9th, 1881.

JOHN J. WEED.

Sworn to and subscribed before me May 6, 1881.

R. J. MEIGS, *Clerk*.

125 In the supreme court of the District of Columbia.

MICHAEL MCCORMICK
vs.
FREEDMAN'S SAVINGS AND TRUST COMPANY and Mary J. Wheeler.

I, Michael McCormick, the foregoing plaintiff, on oath, state that I, together with my counsel and my proposed sureties upon my appeal bond, viz, Lawrence Cavanaugh and Thomas McCormick, upon March 9th, 1881, appeared in court upon the day designated in the notice on file for the purpose of giving said appeal bond, and Enoch Totten appeared for the Freedman's Savings and Trust Company, and said Totten asked us in how much we could justify, and we said in from $20,000.00 to $25,000.00.

The court fixed the bond at $6,000.00, and said Totten said that he would not trouble the court to examine them.

The bond was afterwards executed by myself and said sureties, and delivered to Albert Grant to deposit with the clerk of the court.

M. McCORMICK.

Sworn to before me May 5, 1881.

R. J. MEIGS, *Clerk*.
By M. A. CLANCY,
Ass't Clk.

126 In the supreme court of the District of Columbia. In general term.

MICHAEL MCCORMICK
vs.
THE FREEDMAN'S SAVINGS & TRUST COMPANY, et al.

The complainant moves the court for an order herein approving the

appeal-bond executed by the said complainant, for the prosecution of an appeal to the Supreme Court of the United States; and that such approval shall be entered as of the 9th day of March, 1881.

JOHN J. WEED,
Of Counsel for Complainant.

127 In the supreme court of the District of Columbia.

MICHAEL MCCORMICK
vs.
THE FREEDMAN'S SAVINGS & TRUST CO. and others. } In equity. No. 6690.

To ENOCH TOTTEN, Esq.,
Solicitor for the Freedman's Savings and Trust Company:

Please take notice that on Monday, the 5th day of June, 1881, at 2 o'clock p. m. of the said day, at the conference room of the United States Supreme Court, we shall apply to Mr. Justice Harlan, one of the justices of the Supreme Court of the United States, for an order approving an appeal bond and for a supersedeas in the above-entitled cause.

ROBERT CHRISTY,
JOHN J. WEED,
Sol'rs for Complainant.

128 In the supreme court of the District of Columbia.

MICHAEL MCCORMICK
vs.
THE FREEDMAN'S SAVINGS AND TRUST COMpany John J. Knox, commissioner of the Freedman's Savings & Trust Company; and Mary J. Wheeler.

To the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States:

Your petitioner, Michael McCormick, the complainant in the above-entitled cause, respectfully represents as follows:

1. That on the 17th day of March, A. D. 1879, your petitioner filed in said court his bill of complaint against the said Freedman's *and* Savings & Trust Company, John A. J. Cresswell, Robert Purvis, and
129 Robert H. T. Leipold, the then commissioner' of the said company, and Mary J. Wheeler, praying to set aside the sale of the premises described in the said bill, and praying also for leave to redeem said premises from such sale upon the payment of the lien held thereon by the said Freedman's Savings & Trust Company.

2. That subsequent to the filing of the said bill answers were filed thereto by each of the said respondents, and cross-bill' were filed therein by said commissioners of the said Freedman's Savings & Trust Company, and by the said Mary J. Wheeler, and answers to said cross-bills were filed by the respective respondents named therein, and replications to said answers filed by the respective parties entitled to file the same, and upon the issues thus made testimony was taken, both by the complainant and the said respondents, and upon such testimony your petitioner believes the right and justice of the said cause
130 were clearly with your petitioner and the said Mary J. Wheeler.

3. That on the 10th day of July, 1880, a decree was entered in said

cause adverse to the rights of your petitioner, as well as adverse to the rights of the said Mary J. Wheeler, from which decree your petitioner and the said Mary J. Wheeler, in apt and seasonable time, took an appeal to the said court sitting in general term, and your petitioner attaches hereto a copy of the said decree and marks the same Exhibit A.

4. Your petitioner further states that upon the hearing of the said appeal in the said court in general term the said decree rendered herein on the 10th day of July, 1880, was in all things affirmed, and a decree to that effect made and entered in said court on the 17th day of February, 1881, a copy of which said decree is hereto attached and marked Exhibit B; and your petitioner further states that on
130½ the said 17th day of February, 1881, your petitioner prayed an appeal from the said decree of the said court in general term to the Supreme Court of the United States, which said appeal was, by the said court, then and there allowed as prayed.

5. Your petitioner further states that subsequent to the said last-mentioned date, and on the 9th day of March, A. D. 1881, your petitioner applied to the said court in general term to fix the amount of the appeal-bond which your petitioner should give in order to supersede the said decree of the said court in general term upon the prosecution of the said appeal, and upon such application your petitioner submitted to the said court the affidavits, of which copies are hereto attached and marked Exhibits C and D, but the said court refused to hear the said affidavits read, or to consider the same, and then and there fixed the penalty of the appeal-bond to be executed by your petitioner in
131 order to supersede the said decree on the *the* prosecution of the said appeal at six thousand dollars. And your petitioner states that although the said appeal-bond so fixed by the said court in general term was excessive in amount, and thereby exceeding' oppressive to your petitioner, he was *was* ready and willing to execute the same, with sufficient securities as required by law.

6. Your petitioner further states that on the said 9th day of March, 1881, he appeared in the said court in general term prepared to execute said appeal-bond, and there appeared with him in the said court, at that time, his proposed sureties on said appeal-bond, viz, Thomas McCormick and Lawrence Cavanaugh, and the solicitor for the said Freedman's Savings and Trust Company was notified of the names and residense of said sureties, so required by the rules of the said court, and your petitioner further states that the said court, having fixed
132 the penalty of the said appeal-bond at six thousand dollars, your petitioner and his sureties proposed and offered, then and there, to sign, execute, and deliver the said bond, and the said bond was accordingly made up for the signature of your petitioner and his sureties, and was subsequently signed by each of them. That the sufficiency of the said sureties offered by your petitioner upon the said appeal-bond was not then inquired into and determined by the said court, because the solicitor of the said Freedman's Savings & Trust Company at that time being present in court expressly waived such inquiry, and indicated his willingness to accept said sureties without any examination by the court.

7. Your petitioner further states that, acting upon the belief which had been induced and inspired by the acts and statements of the solicitor for the said Freedman's Savings and Trust Company, that
133 the said bond so as aforesaid executed by your petitioner and his said sureties would be accepted as sufficient, your petitioner

caused the same to be filed in the office of the clerk of said court, as required by law.

And your petitioner further states that having learned subsequent to the expiration of sixty days from the date of the said decree of the said court in general term that the said appeal bond had not been approved by the said court in general term, nor by either of the judges thereof, and that the same had been lost subsequent to its delivery to the clerk of said court, your petitioner thereupon, on the 10th day of May, 1881, caused an application to be made to the said court for leave to file therein a new bond and for an order approving the same nunc pro tunc; and upon the said motion your petitioner caused to be submitted to the said court the affidavits which are copied and hereto attached and marked Exhibits E and F.

134 8. Your petitioner further states that although h*is* on several occasions subsequent to the filing of the said motion and affidavits attempted to have the same heard and 'sidered by the said court, he was unable to have and obtain a hearing and consideration thereof until the 31st day of May, 1881, and the said court upon the hearing and consideration of the said motion did overrule and deny the same, upon the ground and for the reason, as you' petitioner is informed and advised, that the said court did not then possess the power to grant the said motion; and that your petitioner could only secure the right to execute an appeal bond and prosecute said appeal by application to some one of the justices of the Supreme Court, as provided in section 1007 of the Revised Statutes and Rule XXIX of the Rules of Practice of the Supreme Court.

Your petitioner therefore prays that it may please honor to exercise the authority conferred by section 1007 of the Revised Statutes

135 to award a supersed*ias* herein, upon your petitioners executing a bond, with such securities as may be approved by your honor, sufficient to cover all damages and costs which may accrue by reason of the taking and prosecution of the said appeal, as provided in Rule XXIX of the Rules of Practice of the Supreme Court of the United States; and as in duty bound your petitioner will ever pray, &c.

M. McCORMICK.

DISTRICT OF COLUMBIA,
City & County of Washington, ss:

Michael McCormick, the petitioner named in the foregoing petition, being duly sworn, on his oath, states that he has heard read the foregoing petition by him subscribed, and knows *its* the contents thereof; and that the matter and things therein stated and set forth of his own knowledge are true; and that as to those things therein stated

136 upon information and belief, he believes the same to be true.

M. McCORMICK.

Subscribed and sworn to before me this fourth day of June, 1881.

[SEAL.] J. A. TAIT,
Notary Public.

The prayer of the petitioner is granted, & bond herewith attached is approved, to operate as a supersed*ias*. These papers will be filed by clerk of the Supreme Court U. S.

JOHN M. HARLAN,
Asso. Justice, S. C. U. S.

137 In the Supreme Court of the United States.

MICHAEL MCCORMICK, APPELLANT,
vs.
THE FREEDMAN'S SAVINGS AND TRUST COMPANY, JOHN J. KNOX, com'r of the Freedman's Savings and Trust Company, et al., appellees.

It is hereby stipulated and agreed that the above-entitled cause shall be submitted on printed arguments, under the 20th rule of this court, on or before the first day of January, 1882, and the cause shall be, by the appellant, in all things on his part prepared, to be so submitted.

ROBERT CHRISTY,
Att'y for McCormick, Appellant.
ENOCH TOTTEN,
For Appellant.

Clerk will file this stipulation with record.
June 7, '81.

JOHN M. HARLAN,
Associate Justice, S. C. U. S.

138 In the supreme court of the District of Columbia, the 7th day of June, 1881.

MICHAEL MCCORMICK
vs.
THE FREEDMAN'S SAVINGS & TRUST COMPANY; JOHN J. KNOX, commissioner of said company; MARY J. WHEELER, and WILLIAM H. WARD, jr. — Equity. No. 6690.

Know all men by these presents that we, Michael McCormick, as principal, and Thomas McCormick and Lawrence Cavanaugh, as sureties, are bound unto the above-named Freedman's Savings & Trust Company and John J. Knox, commissioner of the said company, in the sum of six thousand dollars, to be paid to the said Freedman's Savings & Trust Company and John J. Knox, commissioner of said company, or their assigns or successors, his executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this 7th day of June, 1881.

Whereas the above-named Michael McCormick has prosecuted his appeal to the Supreme Court of the United States to reverse the rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is, that if the above-named Michael McCormick shall prosecute his said appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

MICHAEL MCCORMICK. [SEAL.]
THOMAS MCCORMICK. [SEAL.]
LAWRENCE CAVANAUGH. [SEAL.]

Sealed and delivered in presence of—
CHARLES B. BEALL.

Bond approved to operate as a supersedeas, June 7, '81.

JOHN M. HARLAN,
Associate Justice S. C. U. S.

139 In the supreme court of the District of Columbia.

MICHAEL MCCORMICK
vs.
JOHN A. J. CRESSWELL AND OTHERS. } Equity. No. 6690.

Testimony in behalf of complainant, Michael McCormick, taken before Mr. Benjamin G Lovejoy, examiner.

WASHINGTON, D. C.,
Wednesday, 14th January, 1880.

Met pursuant to notice at office of Enoch Totten, esq., 416 5th st., NW.

Present, Messrs. Benjamin G. Lovejoy (examiner); Robert Christy (counsel for the complainant, Michael McCormick); Robert H. T. Leipold (counsel for the defendants, the commissioners of the Freedman's Savings and Trust Company), and William R. Smith (counsel for the defendant, Mary J. Wheeler).

RICHARD W. BRUFF, a witness of lawful age, produced and sworn on behalf of the complainant.

140 Examination by Mr. CHRISTY:

Q. 1. State your residence, occupation, and age.

A. 1. Residence, this city; occupation, carpenter and builder; age, 51 nearly.

Q. 2. Have you been continuously a resident in the District of Columbia for the last few years?

A. 2. No, sir.

Q. 3. Where have you been?

A. 3. My family has been here.

Q. 4. And you have been elsewhere?

A. 4. Yes, sir; New York City.

Q. 5. For how long during that time? When did you go to New York; approximate? It is not important that you should be exact.

A. 5. I suppose once. I was there about a year, and have just returned from there.

Q. 6. At what time?

A. 6. I returned in November last.

141 Q. 7. Have you always been engaged in business alone, or had you a partner at any time?

A. 7. I had a partner.

Q. 8. Who was he?

A. 8. Holtzclaw.

Q. 9. What was his first name?

A. 9. Thomas.

Q. 10. What was the name of the firm?

A. 10. Holtzclaw & Bruff was the style of the firm.

Q. 11. When were you engaged in business, and where? I would like to know when the copartnership was formed, and how long it continued.

A. 11. I think about 1865 or 1866.

Q. 12. How long did you continue actively in business?

A. 12. Until 1872.

Q. 13. Whereabouts were you conducting business; in what part of the city; Holtzclaw & Bruff?

A. 13. Mr. Holtzclaw's residence is on the cor. 11th & C, SW.; and the shop was back of that; part of the time we occupied that place, and in later years we had a place on Thirteenth street near Ohio avenue.

142 Q. 14. Southeast?

A. 14. No, sir; that would be northwest.

Q. 15. What kind of business were you engaged in?

A. 15. In building.

Q. 16. During this time had you any knowledge of William T. Johnson, or any acquaintance with him?

A. 16. Yes, sir.

Q. 17. When did your acquaintance with him begin?

A. 17. I think my general acquaintance commenced with him through the building associations.

Q. 18. At about what time; with reference now to the formation of the copartnership?

A. 18. I should think about 1867, or probably a little earlier than that—almost as soon as we commenced the partnership.

Q. 19. Did you personally or did your firm transact business with Mr. Johnson? Had you business relations with him of any kind?

A. 19. Very frequently we had some business transactions.

Q. 20. What was his relation to the several building companies of which he was a member?

A. 20. He was secretary of several of them.

143 Q. 21. When did you become the owner of the real property involved in this controversy, the description of which is (reading) "Part of lot numbered one, and of a part of lot numbered four, in square No. 730, in the city of Washington?

(Mr. Leipold objects to the question, as it is not the best evidence; the land records will show when he became the owner.)

A. 21. Well, I cannot tell you, any way.

Q. 22. Were you sole owner, or were you and Holtzclaw jointly? Was it copartnership property?

A. 22. That I do not recollect, whether it was in my name or whether it was in Mr. Holtzclaw. Very often we had some property in his name, and some in my own; although it was always considered joint property, although it might not be in our joint names.

Q. 23. But as regards this particular piece you are unable to state?

A. 23. No, sir.

Q. 24. It is the property now occupied by Johnson or Mrs. Wheeler?

A. 24. I know the property, and I recollect whom I bought the property from; I bought it from Mrs. Devlin. (After a pause.)

144 Since I have been thinking about it, though, it is my impression that the property was in my name. We very often (I explained that), we very often in speculating in property in that way had it in our own name, so that we wouldn't have to bother each other's family to make deeds of trust and such things, although it was understood between us that it was partnership property.

Q. 25. Do you remember the date of your conveyance to the defendant Mary J. Wheeler?

A. 25. No, sir; I do not. I have no memorandum of those transactions at all.

Q. 26. What became of the original papers, deeds; to whom did you deliver them, at the time, or after the conveyance to Mary J. Wheeler?

A. 26. I cannot say. I do not recollect. After the property went out of my hands, part of the property was sold to Doctor Ford, and

the building association got another portion of it, and Mrs. Wheeler got the portion that she resides in, so that I do not know where those papers disappeared to.

Q. 27. Was the lot improved by the dwelling occupied by Mrs. Wheeler when it came into the possession of yourself and Holtzclaw?

145 A. 27. No, sir.

Q. 28. Who put up those improvements?

A. 28. Holtzclaw and myself. Holzclaw & Bruff.

Q. 29. Did you convey to Mrs. Wheeler, with the knowledge and consent of your copartner?

A. 29. Yes, sir.

Q. 30. The improvement had been made at that time?

A. 30. Yes, sir.

Q. 31. Do you remember with what banking association the firm of Holtzclaw & Bruff did business in the city of Washington, or whether you did business with the Freedman's Savings and Trust Company?

A. 31. Well, I have done business with most of the banks in the city.

Q. 32. Well, we limit your business, then, to the Freedman's Savings and Trust Company. You did a bank business, and amongst other bank business you did business with one of the defendants in this case?

A. 32. Yes, sir; the Freedman's Bank.

Q. With the Freedman's Savings & Trust Company, know, as the Freedman's Bank?

A. Yes, sir.

Q. 33. You may state whether that business was extensive or limited?

146 A. 33. Well, I think I did more borrowing from the Freedman's Bank than any other bank I have had any connection with; that is the only business I did with them.

Q. 34. The only business you did with them was borrowing?

A. 34. Yes, sir.

Q. 35. You were not a depositor, but a borrower?

A. 35. Yes, sir.

Q. 36. What was your manner of doing business with them; did you give them personal securities, or did you deposit collaterals?

A. 36. I think it was mostly collaterals. Shall I state the way I first became——

Q. 37. (Interposing.) No, that is immaterial. I merely want to know your mode of doing business. I will bring you down particularly. What was the condition of your business with the Freedman's Bank on or about the 1st day of July, 1872, and state whether you were indebted at that time, and upon what securities, and to what extent?

A. 37. Well, I cannot recollect the amount exactly. They held one note of mine for $3,000, or rather a note of the firm; I was the

147 financial manager of the firm; I managed the finances of the firm. And they held another note of Mrs. Sherman for $2,000, but I don't recollect how much was owing on it; whether any at that time or not.

Q. 38. Who was the maker of the Sherman note. Was your firm the makers or endorsers of that note?

A. 38. We were the endorsers of it. Mrs. Sherman was the maker of it. It was made payable to our order, I think.

(Handing two papers to the witness.)

Q. 65. All that you enumerated?

A. 65. Yes, sir.

Q. 66. Had you any account with the bank at that time, excepting such account as might arise out of the two notes of which you have spoken?

A. 66. I had not.

Q. 67. The Wheeler note and the Sherman note being entirely distinct transactions?

A. 67. Yes, sir.

Q. 68. At the time of the deposit of the Wheeler note as a collateral security for the principal note of $3,000, with whom on the part of the bank did you have the transaction?

A. 68. Mr. Stickney, to the best of my knowledge. I don't remember having any business transactions with any of the others.

Q. 69. George W. Stickney?

A. 69. Yes, sir.

155 Q. 70. Did the indebtedness to the bank arise at the time of the execution of the $3,000 note and the deposit of these collaterals, or had it accrued to the bank against your firm prior to that time?

A. 70. At the time the note was given the money was advanced.

Q. 71. What amount was advanced by the bank?

A. 71. The $3,000, I think; to the best of my knowledge $3,000 was advanced.

Q. 72. At the time of the deposit of the real-estate note that is described here, what reference was made, if any, to the Sherman note?

A. 72. I don't think there was any made at that time.

Q. 73. With reference to what indebtedness—to which of the two indebtednesses—did you deposit it?

A. 73. All the collateral that is mentioned there was on account of the $3,000 note; no mention of the other.

Q. 74. You may state whether the defendant Mary J. Wheeler, executed this note for $2,000 in your presence, and whether it was delivered to you by her?

156 (Question objected to by Mr. Leipold as immaterial.)

A. 74. I do not recollect; I think not though.

Q. 75. Through whom did you conduct the business, if any one?

(Question objected to by Mr. Leipold as immaterial.)

A. 75. Mr. Johnson.

Q. 76. W. T.? There are so many Johnsons we must identify them.

A. 76. Yes, sir.

Q. 77. You may state whether a deed of trust was executed with respect to this $2,000 note by Mrs. Wheeler.

(Mr. Leipold objects to the question; it is not the best evidence.)

A. 77. Yes, sir; I believe there was, to the best of my knowledge.

Q. 78. From whom did you receive that deed of trust?

(Objected to by Mr. Leipold as immaterial.)

A. 78. That was from W. T. Johnson, to the best of my knowledge?

157 Cross-examination by Mr. LEIPOLD:

X Q. 1. Was there, or was there not, some conversation between you and Mr. Stickney at the time the Sherman note was cashed by the bank as to the Wheeler note being considered as part security for Sherman note, in case the collateral filed with the Sherman note should not produce enough to pay it?

X A. 1. No, sir; I asked him if he would take it if I could do anything with that note, and he said, being a second deed of trust, they did not like to take any second deed of trust notes, and I don't think he took that note at that time.

X Q. 2. There was then a prior deed of trust upon the property when you conveyed it to Mrs. Wheeler, was there?

(Question objected to by Mr. Smith as not legitimate cross-examination.)

X A. 2. No, I think not; there might have been in a building association at the time; probably there was a deed of trust to the building association at the time; I think there was. There was a deed of trust given by Mrs. Wheeler, I think, a first deed of trust for $5,000;
158 that was to settle up the building association probably. I don't recollect. I know there was a prior deed of trust of $5,000 to this $2,000 deed of trust.

X Q. 3. That deed of trust was payable to General Myer, was it not?

X A. 3. Yes, sir.

X Q. 4. Did you give that deed of trust on the property; did you execute it?

X A. 4. I do not recollect; I do not recollect whether it is in my name or Mrs. Wheeler's.

(Paper handed to witness.)

That is the deed. I am satisfied that I and my wife executed it and not Mrs. Wheeler.

X Q. 5. When was that deed of trust put upon the property, and what was it given to secure?

X A. 5. It was given to secure the money loaned on that property.

(Mr. Smith objects to all the testimony in reference to this deed of trust as not proper on cross-examination, and as the deed itself is the best evidence.
159 (Mr. Leipold offers the said deed of trust in evidence, and the same is marked "Exhibit No. 3," and hereto attached. See pp. To the introduction of this deed Mr. Smith objects.)

X Q. 6. To whom was that money loaned?

X A. 6. I received the money on that, to the best of my knowledge; I was the beneficiary of it.

Mr. SMITH. From Mr. Myer?

WITNESS. Yes, sir.

R. W. BRUFF.

Sworn to and subscribed before me the 18th day of March, 1880.

B. G. LOVEJOY,
Examiner.

160 MICHAEL MCCORMICK, a witness of lawful age, produced and sworn on behalf of complainant.

Examined by Mr. CHRISTY:

Q. 1. Mr. McCormick, you may state your residence, and your relation to this suit. You are the complainant?

A. 1. I live at 650 B street, southeast, and am the complainant in this suit.

Q. 2. Do you reside near the premises in controversy?

A. 2. Yes, sir.

Q. 3. You may state whether you received a conveyance of the premises in controversy, and if so, the date of that conveyance.

A. 3. I have received a conveyance, a deed for the property; the date of the conveyance I do not recollect.

(It is agreed by counsel that the original deed from Mary J. Wheeler to the complainant, McCormick, shall be considered in evidence.)

Q. 4. This deed appears to be dated June 3, 1873, (referring to
161 paper.) About what date was that conveyance to you, that deed from Mary J. Wheeler?

A. 4. Just about that time, sir, I think.

Q. 5. June 3, 1873?

A. 5. Yes, sir.

Q. 6. You may state whether this deed was an absolute conveyance or not.

A. 6. That was my understanding of the matter, sir.

Q. 7. Was there any cotemporaneously executed paper in regard to it?

(Question objected to by Mr. Leipold as immaterial.)

A. 7. At that time there was, I believe, an agreement.

Q. 8. Was it executed with respect to this conveyance? Was it in writing, this agreement?

(Question objected to by Mr. Leipold.)

A. 8. Yes, sir.

Q. 9. What was the consideration of the deed executed to you by Mrs. Wheeler?

(Mr. Leipold objects to the question because the deed is the best evidence, and also enters a general objection to all testimony respecting this agreement.)

162 A. 9. Well, I know none other than that it was a deed in fee simple for the property, and it was for $4,200 that was owing me from Mrs. Wheeler.

Q. 10. Were you aware at that time of any antecedent deed of trust on the property?

A. 10. I was aware of one.

Q. 11. Which was that?

A. 11. $5,000; and there was another that was spoken of by the Freedman's Bank, but I understood from Mrs. Wheeler that that didn't appear against the property; that that wasn't against the property. That was my understanding of that all the way through.

Q. 12. You may state whether this transaction between you and Mrs. Wheeler was in good faith or not.

(Question objected to by Mr. Leipold as immaterial.)

A. 12. I think it was in good faith; I know of no reason in the world to doubt it.

Q. 13. Did you execute at that time any other instrument of writing relating to the transaction?

(Mr. Leipold objects to the question.)

A. 13. I did.

163 Q. 14. Where is that instrument in writing?

A. 14. Well, now, sir, I am not able to tell you where it is, indeed.

Q. 15. Who had the custody of that agreement, of which you speak? Was it in your possession?

A. 15. Yes, sir. It was in my possession.

Q. 16. Who filed this bill for you? It appears that Mr. Barrett filed this bill?

A. 16. Yes, sir. Mr. Barrett filed the bill; he had all the papers in the case.

Q. 17. He had all the papers in the case, and that has not been returned to you?

A. 17. No, sir; none of them have been returned to me.

Q. 18. You may state whether the defendant Mary J. Wheeler, has complied with the stipulations of the written agreement to which you have referred, by paying the sum therein mentioned, or any portion of the same?

(Objected to by Mr. Leipold.)

A. 18. She has not.

164 Q. 19. This agreement, as appears by the bill in this case, is as follows (reading):

"This agreement made this third day of June, A. D. 1873, by and between Mary J. Wheeler and Michael McCormick; whereas the said Mary J. Wheeler has, by deed dated June 3, 1873, conveyed unto the said Michael McCormick in fee simple parts of lots one (1) and four (4) in square No. 730, in the city of Washington, D. C.: now, therefore, it is hereby understood and agreed, that if the said Mary J. Wheeler, her heirs or assigns, shall pay or cause to be paid unto the said McCormick, on or before the first day of January, 1874, the sum of forty-two hundred dollars, ($4,200), with interest at ten per cent. per annum, from November 6th, 1872, and all further sums of money that the said McCormick may, for or by reason of his ownership of said property, pay out, with interest as aforesaid, then the said Michael McCormick, his heirs or assigns shall reconvey unto the said Mary J. Wheeler, her heirs and assigns to *to* hold as in her former estate.

"Witness our hands and seals,

"MARY J. WHEELER. [SEAL.]
"MICHAEL McCORMICK. [SEAL.]

"Sealed in the presence of—
"DANIEL O. C. CALLAGHAN.
"GEORGE B. STONE."

165 Is that correct?

A. 19. That is correct, sir.

Q. 20. You believe this copy, which I have just read to you, incorporated in the bill, is a correct copy of the original agreement, and that it was executed by the defendant Mary J. Wheeler, and likewise by yourself, as so appears?

A. 20. Yes, sir.

(It is admitted by respective counsel that this copy set forth in the bill is a true copy of the original agreement hereinbefore referred to. Mr. Leipold, however, objects to the introduction of this agreement as evidence in the case, on the ground that it is not at all material to the questions at issue, unless it can be shown that the Freedman's Bank had due notice of the existence of such agreement.)

Q. 21. Here are two witnesses—Callaghan and Stone. Where is Stone?

A. 21. He is in the city somewhere. He is an attorney.

166 Cross-examination by Mr. LEIPOLD:

X Q. 1. Mr. McCormick, did not Mr. George W. Stickney, the actuary of the Freedman's Savings and Trust Company, speak to you repeatedly about the existence of this $2,000 deed of trust by Mrs. Wheeler, against this property, and that the bank should hold the property liable for its payment?

(Question objected to by Mr. Smith, because it does not state the time of the conversation or the place.)

X A. 1. Yes, sir; but from the information I had from Mrs. Wheeler, there was no such note in existence against the property, and consequently I never recognized it.

X Q. 2. Did not Mr. Stickney show you the $2,000 note?

X A. 2. Not that I know of, sir; I do not remember.

X Q. 3. When and where did that conversation, or those conversations, take place?

X A. 3. In the bank, sir.

Mr. CHRISTY. In the Freedman's Bank?

Answer. Yes, sir.

167 By Mr. LEIPOLD:

X Q. 4. And when; was it before or after the property was conveyed to you by Mrs. Wheeler?

X A. 4. Well, that I am not able to state, sir.

X Q. 5. Was it before or after the sale of the property under that deed of trust by the commissioners of the Freedman's Savings and Trust Company?

X A. 5. It was before the sale. (After a pause.) I desire to correct myself one moment. I am not positive whether it was Mr. Stickney or you (Mr. Leipold) asked that question; I do remember that you mentioned it to me, but whether he did so or not, I am not positive. That is my recollection of the matter.

X Q. 6. Was it before the sale made by the commissioners that I mentioned it to you?

X A. 6. It was before the sale in——

(It is admitted by co'nsel for complainant that Mr. Leipold's connection (as commissioner) with the Freedman's Savings and Trust Company commenced on the morning of the 13th of July, 1874.)

168 Redirect examination by Mr. CHRISTY:

R. Q. 1. Do you recollect the time of the sale by the trustee named—by one Ward—of the property in controversy?

R. A. 1. Yes, sir; I do.

R. Q. 2. Were you present at the sale?

R. A. 2. I was, sir.

R. Q. 3. Well, now, you may state who were present at that sale; all that you remember.

R. A. 3. I remember of seeing Mr. Ward, Mr. Leipold, Mr. Wimer, I think, and I think there was a Mr. McMeniman and Mr. Chelini and myself. There might have been one or two other gentlemen there, that I did not know.

R. Q. 4. In what capacity was Mr. Ward to whom you refer acting?

R. A. 4. I think, as trustee in the case.

R. Q. 5. Mr. Leipold, one of the commissioners of the Freedman's Bank?

R. A. 5. Yes, sir.

R. Q. 6. Who was the next, Mr. Wimer, who was he?

R. A. 6. He was trustee for General Myer.

169 R. Q. 7. Now, who else?

R. A. 7. I saw Mr. McMeniman; he was a neighbor doing business close by; I saw Mr. Chelini.

R. Q. 8. Who was he?

R. A. 8. He was a man who lived across the street.

R. Q. 9. Also a neighbor?

R. A. 9. Yes, sir.

R. Q. 10. And there was one or two others?

R. A. 10. There were two or three other gentlemen there whom I did not know, but I think they came in the carriage with Mr. Leipold.

R. Q. 11. Did Mr. Wimer make a bid upon the property?

R. A. 11. Not that I know of.

R. Q. 12. Were you standing near him?

R. A. 12. I was, sir.

R. Q. 13. Mr. McMeniman, did he make a bid upon it?

R. A. 13. No, sir, not that I know of.

R. Q. 14. Or Mr. Chelini?

R. A. 14. No, sir, not that I know of.

170 R. Q. 15. What were their circumstances pecuniarily?

R. A. 15. One of them keeps a stone yard and the other is a grocer.

R. Q. 16. How many bids were made at that sale?

R. A. 16. Well, in fact, I did not hear any bids, except one of $1,400.

R. Q. 17. What delay was there after the reception of that bid in the trustee, Mr. Ward, accepting it?

WITNESS. What delay was there after the bid?

Mr. CHRISTY. Yes, sir.

R. A. 17. I could not tell, sir. I was rather excited at the time.

R. Q. 18. How long after, was it struck off?

R. A. 18. Not very long. It was all over in ten or fifteen minutes.

R. Q. 19. What kind of a day was it?

R. A. 19. Well, sir; it was a very cold day—a very disagreeable day.

R. Q. 20. To whom is that day sacred amongst the saints and benefactors? It is the 17th day of March.

R. A. 20. That is the anniversary of Saint Patrick.

171 R. Q. 21. Well, of course the court will take judicial notice then, of its being a bad day. Now, these neighbors; were they Irish?

R. A. 21. Well, one of them was Irish, and the other, I think not.

(Mr. Leipold objects to this examination in reference to St. Patrick's day.)

R. Q. 22. Were there any boys there?

R. A. 22. I saw two or three boys there, I think.

R. Q. 23. What was the market value of the property at the time of the sale; the fair reasonable cash value of that property?

R. A. 23. Well, now, sir; I don't know as I could tell.

R. Q. 24. Approximate; you live near there, and carry on a business, and have for years?

R. A. 24. Yes, sir; well, I should consider it cheap at $8,000.

R. Q. 25. Do you own any other property on Capitol Hill?

R. A. 25. I do, sir.

R. Q. 26. Have you been aware of any other sales of property made prior to that time, or about that time?

172 R. A. 26. No, sir; there was none for sale in those days that I know of; property was held very high there.

R. Q. 27. Well, did you know of sales being made prior to that time and the prices paid?

R. A. 27. I know in the next square to it I offered $2.10 a foot for ground, and could not get it—without any improvements—one square farther away from the Capitol.

R. Q. 28. Do you remember the time of the sale of the other property—the adjoining property?

R. A. 28. No, sir; I did not attend that sale.

R. Q. 29. State now, the character of the improvements upon that house; have you ever been in it.

R. A. 29. Yes, sir; everything was first class. I don't know as I ever was in a nicer finished house.

R. Q. 30. How many stories?

R. A. 30. Three stories and a basement.

R. Q. 31. State as to the materials used in it; whether it was of the ordinary or of a superior quality.

R. A. 31. Everything there was considered of a superior quality.

173 R. Q. 32. What kind of wood were the doors?

R. A. 32. Walnut.

R. Q. 33. Were they heavy or light?

R. A. 33. Heavy; and the trimmings were very well finished and of the best material.

R. Q. 34. Of what material is the house built?

R. A. 34. Brick.

R. Q. 35. What is the rental value of that property?

R. A. 35. Well, it was in my possession on one occasion. (Interposing.) What I want to know is, what the rental value was at the time of the sale.

Answer. At the time of the sale I had it rented for $75 per month.

R. Q. 36. To whom?

R. A. 36. He was then Assistant Secretary of the Treasury, Mr. Conant.

Re-examination by Mr. LEIPOLD:

X Q. 1. Mr. McCormick, did you say that the day the property was sold a stormy day?

X A. 1. A cold, disagreeable day, sir.

174 X Q. 2. Did it rain or snow at the time of the sale?

X A. 2. During the sale it was not raining, but it looked as though it might rain or storm at any moment.

X Q. 3. Was there an announcement made at the sale, that the property was to be sold subject to a prior deed of trust?

X A. 3. Well, there probably might have been ten minutes before I got there. I was standing at my door and saw the flag there, and when I saw the crowd collected there I put on my coat and walked across the street and the property was sold while I got there.

X Q. 4. Did you understand that to be the case, that the property was being sold subject to a prior deed of trust?

X A. 4. I did, sir.

X Q. 5. Was there not an announcement made as to the amount then due upon the prior trust, with interest?

X A. 5. I do not remember that, sir.

X Q. 6. You did not hear that?

X A. 6. No, sir; I did not.

175 X Q. 7. Did you not bid on that property at that sale?

X A. 7. I did not, sir.

X Q. 8. Didn't you hear one make an offer of $1,000?

X A. 8. I don't remember, sir. I remember $1,400, and it fell through.

X Q. 9. Yes, I made that. Did you make any objection to the sale at that time.

X A. 9. I did not, sir.

X Q. 10. Did you, at any time subsequent to the sale, make any objection to the sale to the commissioners of the Freedman's Bank?

X A. 10. I received a note from the commissioners that they wanted to see me at the bank. I went to the bank, and they said they wanted me to pay some interest on that note—on the $2,000 note. I told them that I did not recognize that note; that I always understood that that note was not against that property, but that it was an accommodation note, or something of that kind, and really did not belong on that
176 property. And one of the commissioners—I won't be certain, but that it was you, Mr. Leipold—asked me to pay $5.00, or something on the note, to show that I recognized the note to pay it, and I told them that I did not want to recognize it as against the property; and then some one told me that they were going to sell, and I said, let them sell, but I would not recognize the note.

X Q. 11. I asked you whether you, at any time subsequent to the sale, objected?

X A. 11. No, sir; I did not.

X Q. 12. Did you interpose any objection to the commissioners taking possession of the property?

X A. 12. No, sir; I did not, sir.

X Q. 13. You knew that they had possession of it?

X A. 13. I did not know anything about what they did. I know they sold it, and I received in one or two days afterwards a note from Secretary Conant, that he had received a notice from the Freed-
177 man's Bank, to pay me no more rent, and he paid me up to the 17th of March, for which I sent him a receipt.

X Q. 14. Did you object to Mr. Conant paying rent?

X A. 14. I did not, sir.

X Q. 15. Did you have any conversations with me about some of the furniture in that building, after the sale?

X A. 15. I did, sir.

X Q. 16. And you did not make any objection to the sale of the property, or the possession of it by the commissioners?

X A. 16. No, sir; I did not, for the simple reason that I did not have money enough to go to law with the bank, and I thought it would be up-hill business for me to go to law with it.

(Mr. Christy objects to so many of the foregoing questions as relate to matters occurring after the sale.)

X Q. 17. You state that you made an offer of $2.10 a foot for some property near it?

X A. 17. Yes, sir; one square farther away from the Capitol.

178 X Q. 18. When did you make that offer?

X A. 18. It was about the same year, I think, or about that time, in that year, I think. I think it may have been in that year, or may be the year before, but not very far. But there did not appear to be any difference in the price of property at that time.

X Q. 19. Do you know the amount that was due on the first deed of trust note at the time of the sale?

X A. 19. Well, I know that it was all due, $5,000; that is, I think it was.

X Q. 20. And any interest?

X A. 20. There must have been some interest; because I paid some $1,500 to $1,800 myself on that note.

Mr. CHRISTY. The $5,000 note?

Yes, sir; because as fast I got money for rent I would take that, and take it up to the agent of Mr. Myer.

By Mr. LEIPOLD.

X Q. 21. While you held the legal title to that property, after the deed from Mrs. Wheeler, to which you referred in your direct
179 examination, did anybody ever raise any objection to the validity of the Myer note (of the $5,000 note), or the deed of trust?

(Question objected to by Mr. Smith, because it does not specify any person, time, or place, and by Mr. Christy, on account of its indefiniteness.)

X A. 21. No, sir; not to my knowlege.

X Q. 22. Was it ever your intention, until just prior to the time you filed the bill in this case, to go into litigation with the Freedman's Bank, concerning the right of the bank to sell that property under the Wheeler trust, for $2,000?

X A. 22. It was always my intention, if I could have raised means to contend with them; it was always my intention, because I was always under the impression that they had no right to sell it.

X Q. 23. Did you ever make any statement about it to any of the commissioners—anybody connected with the bank—subsequently to the sale, about any such intention, before the filing of this suit?
180 (Question objected to by Mr. Smith, because it does not state time or place distinctly, and as the officers of the bank may have included forty men or only one man.)

X A. 23. No, sir; I never did any further than that. I would not recognize the note.

X Q. 24. But that was not after the sale, you know?

X A. 24. No, sir.

(Mr. Smith reserves the right to cross-examine Mr. McCormick, and also to produce him as a witness in behalf of the defendant Mary J. Wheeler.)

MICHAEL McCORMICK.

Sworn to & subscribed before me this 8th day of April, 1880.

B. G. LOVEJOY, *Examiner.*

Adjourned to Friday, January 16th, 1880, at one (1) o'clock p. m.

181 WASHINGTON, D. C., *Friday, January* 16, 1880.

Met pursuant to adjournment. Present, the examiner, Mr. Christy, and Mr. Leipold.

Mr. Christy, counsel for complainant, announces that he rests his case.

Mr. Leipold, counsel for the defendants, the commissioners of the Freedman's Savings and Trust Company, states that he is ready to proceed with the testimony in behalf of his clients.

Mr. Smith, counsel for defendant Mary J. Wheeler, is not present, but sends word, through Mr. Christy, that he declines to go on until the commissioners of the Freedman's Savings and Trust Company shall have filed an answer to the amendment made by Mrs. Wheeler to her cross-bill.

Adjourned to Wednesday, January 21st, 1880, at one (1) o'clock, p. m.

182 WASHINGTON, D. C., *Wednesday, January* 21, 1880.

Met pursuant to adjournment. Present, Messrs. Christy, Leipold, and Smith, counsel, and Mr. Lovejoy, examiner.

WILLIAM H. WARD, a witness of lawful age, produced and sworn on behalf of the defendants, the commissioners of the Freedman's Savings and Trust Company.

Examination by Mr. LEIPOLD:

Q. 1. Mr. Ward, state your name and residence and your age.

A. 1. William H. Ward; Washington City; sixty-one.

Q. 2. Are you acquainted with the defendants in this case, the commissioners of the Freedman's Savings and Trust Company?

WITNESS. Well, who are the commissioners?

Mr. LEIPOLD. John A. J. Creswell.

WITNESS. I know him.

Mr. LEIPOLD. Robert Purvis and Robert H. T. Leipold.

183 A. 2. Well, I am not acquainted with Mr. Purvis, I think; but I have met Mr. Creswell and Mr. Leipold.

Q. 3. Did you receive a request from the commissioners some time in 1876—in March, 1876, or thereabouts—asking you, as trustee in a certain deed of trust, to proceed to advertise and sell the property therein mentioned?

A. 3. I did. I don't know whether I have got it or not; I had it in writing at the time.

(Mr. Christy objects to any parole evidence. The writing must be produced.)

(Continuing) I have it in writing, dated March 6, 1876 (producing paper.)

Q. 4. Was that request in writing?

A. 4. Well, I think that letter (referring to paper) requested it. I did receive a letter from the officers.

Q. 5. Have you got that request with you?

A. 5. Well, if that is not it, I have not got it, but I think that is it. I haven't seen it for some time; I did not read it through. (After further examination of the paper) Yes, that is it.

184 (Said paper is here offered in evidence, marked Exhibit No. 4, and hereto attached. See pp. .)

Q. 6. Now, Mr. Ward, will you please state as well as you can what action you took under that request?

A. 6. I prepared an advertisement and gave it into the hands of an auctioneer.

Q. 7. Have you a copy of the advertisement with you?

A. 7. Yes, sir; I have one there (referring to a deed of trust), and this is one (producing paper).

(Said advertisement is here offered in evidence, marked Exhibit No. 5, and hereto attached. See pp. .)

Q. 8. The date of sale of this property in this advertisment is stated to be the 17th day of March, 1876?

A. 8. Yes, sir.

Q. 9. Is that the day when the sale was made?

A. 9. I think so; that is my recollection of it. This is the auctioneer's account (producing paper) which corroborates that.

Q. 10. Well, you were there at the sale all the time?

185 A. 10. Oh, yes, sir.

Q. 11. How many persons were there present, as near as you can remember?

A. 11. I suppose there were certainly twelve or fifteen persons there. There might have been more.

Q. 12. Do you remember how many bids there were made on the property before it was knocked down?

A. 12. I do not.

Q. 13. Do you remember whether there were any except the one upon which it was knocked down?

A. 13. I think there was.

Q. 14. Was it announced at the time of the sale that the property was sold subject to a prior deed of trust?

A. 14. It was, sir.

Q. 15. Do you remember whether a statement was made then and there showing the amount due on the prior deed of trust subject to which the sale was made?

A. 15. I think the statement was made that accompanied the letter. (Referring to Exhibit No. 4.)

186 Q. 16. What sort of a day was it, Mr. Ward?

A. 16. Well, it was a day that had been partly cloudy and partly clear.

Q. 17. Was it storming at or about the time of the sale?

A. 17. It was not; it was cloudy.

Q. 18. Who bought the property?

A. 18. It was knocked down to the commissioners.

Q. 19. At what figure?

A. 19. $1,400.

Q. 20. Subject to——

A. 20. Subject to the prior trust.

Q. 21. Have you the original deed of trust under which this sale was made by you?

A. 21. Yes, sir; this is it (producing paper).

Mr. LEIPOLD. Now, I would like to introduce, as an exhibit in this case, a certified copy of that deed of trust taken from the record office?

Mr. SMITH. I insist upon the original deed being made an exhibit, inasmuch as that original is now present before the court.

187 Mr. LEIPOLD. (To witness.) Mr. Ward, have you any objection to filing the deed of trust as an exhibit in this case, the original paper?

WITNESS. I do not wish to part with it.

Mr. LEIPOLD. (To Mr. Smith.) Do you object to my introducing a certified copy?

Mr. SMITH. If Mr. Ward declines to file it I have no objection to the introduction of a certified copy, but I insist upon the original being made an exhibit.

Q. 22. Now, Mr. Ward, tell us how you applied the proceeds of that property, $1,400?

A. 22. I deducted from the $1,400 (the amount of sale), the auctioneer and advertising, altogether, $66.91—auctioneer and advertising; the auctioneer paid all the bill.

Q. 23. Did you make any other deductions?

A. 23. I deducted my own commission, $42.00, which left a balance of $1,291.09.

Q. 24. Did you make no disb'rs'ments on account of taxes?

A. 24. No, sir; I did not, on account of this prior trust.

Q. 25. What did you do with the balance?

188 A. 25. I paid it to you, as one of the commissioners, and got your receipt and had the amount credited on the back of the note.

Mr. SMITH. On the back of what note?

WITNESS. The original note.

Mr. SMITH. The $2,000 note?

WITNESS. Yes, sir; the note that was secured by the trust; for that I took Mr. Leipold's receipt.

Q. 26. Mr. Ward, was everything done at that sale to secure the best possible price for the property, in your judgment?

(Mr. Christy objects to the form of the question as leading.)

A. 26. It was, so far as I know. I intended that it should be, and I believe it was done.

Q. 27. Well, after the sale, what further action did you take in the matter?

A. 27. I do not think I reported to the commissioners, because you were there representing them, and probably another—I don't know.

Q. 28. Well, I mean in reference to the execution?

A. 28. (Interposing.) I made a conveyance.

189 Q. 29. Made a deed?

A. 29. To the commissioners; yes, sir. (Paper handed to witness by Mr. Leipold.) That is the deed.

(This deed is introduced in evidence with the understanding that it may be withdrawn by Mr. Leipold after the testimony shall have been closed, upon his filing a certified copy in lieu thereof.

Said deed is marked Exhibit No. 6, and hereto attached. See pp.

At this point Mr. Ward is willing that the deed of trust from Mary J. Wheeler to himself, and before referred to, may be filed herewith, it being understood between counsel that he may withdraw the same after the close of the testimony, upon leaving a certified copy thereof in its stead. Said deed of trust is marked Exhibit No. 7, and hereunto attached. See pp. .)

190 Cross-examined by Mr. CHRISTY:

X Q. 1. Mr. Ward, from what source did you get the description of the property, as I find it in the advertisement, that you have offered in evidence (Exhibit No. 5)?

X A. 1. I got it from Exhibit No. 4. There is a part of the property there (referring to Exhibit No. 7) that is not included in the advertisement.

X Q. 2. You are aware that you varied from the description of the property in the deed of trust under which you proceeded?

X A. 2. Yes, sir; the property advertised and sold is not all the property that is in the trust.

X Q. 3. Will you please state the names of so many persons as were present at the sale to which you have referred?

X A. 3. No; I cannot state.

X Q. 4. Could you state the number taking part as bidders?

X A. 4. I don't know as I could state it.

191 X Q. 5. Are you willing to say that any bids were made, excepting such as were made by the representatives of the defendants, the Freedman's Savings and Trust Company?

X A. 5. My recollection is that there were other bids; by whom, or what they were, I do not recollect.

X Q. 6. Are you able to state how many persons of that company represented the bank, or were there any except of the bank?

X A. 6. I now only recollect Mr. Leipold.

X Q. 7. If there were others there representing the bank, you were unable to distinguish between them and such persons as you speak of as the other bidders.

X A. 7. I know Mr. Creswell, but I don't think he was there; Mr. Purvis I don't know.

By Mr. SMITH:

X Q. 1. By what authority did you sell that property?

X A. 1. By the authority of the deed of trust, and at the instance of that request (referring to Exhibit No. 4).

192 X Q. 2. Did you announce at that sale that this property was sold subject to the prior trust of J. B. Wimer?

X A. 2. Yes, sir; I don't know as Mr. Wimer's name was mentioned; I don't recollect particularly about that, but it was announced there that it was sold subject to a prior trust for such an amount, with interest, &c.

X Q. 3. Upon what authority did you make that announcement?

X A. 3. Well, I had the abstract; that I returned to the bank after I was done with it; and my attention was called to it by that letter (Exhibit No. 4).

X Q. 4. Well, was it by the authority of this letter (Exhibit No. 4) that you made that announcement?

X A. 4. Yes, sir.

X Q. 5. Have you that abstract now?

X A. 5. I have not, sir; I returned it to the bank after the sale.

(Paper handed to witness by Mr. Leipold.)

X Q. 6. Is that the abstract?

X A. 6. I think it is.

193 X Q. 7. I find in the letter of Mr. Leipold, upon which you have acted, the following sentence (reading): "The property should be advertised and sold subject to the prior trust to J. B. Wimer, mentioned in the abstract for $5,000, and interest at ten per cent. from October 3, '71, less $1,475 paid." Did you have any knowledge outside of that part of this letter of the existence of that prior lien of Mr. Wimer?

X A. 7. No, sir; I had no knowledge of the deed of trust under which I acted until it was sent to me.

X Q. 8. Was that deed of trust ever delivered to you by anybody?

X A. 8. I do not recollect whether it was, or whether I got it out of the record office.

X Q. 9. I understand you to say that you had no knowledge of that deed of trust (Exhibit No. 7) until it was sent to you by the bank?

X A. 9. Well, until I was requested to sell under it.

194 X Q. 10. Well, who conveyed it to you?

X A. 10. Well, I say that I don't recollect whether I got it from the record office.

X Q. 11. Well, do I understand you to say that the first knowledge you have of the recollection of that deed of trust was when these gentlemen requested you to sell the property?

X A. 11. Yes, sir; that is my first recollection of it.

X Q. 12. Is this the abstract referred to in this letter upon which you acted, to the best of your recollection? (Handing to witness paper before mentioned.)

X A. 12. I say I believe it is; but there is no mark upon it by which I could tell.

(Abstract offered in evidence, with understanding that it may be withdrawn by Mr. Leipold after the close of the testimony, upon substituting a copy thereof. It is marked Exhibit No. 8, and hereto attached. (See pp. .)

X Q. 13. I understand, then, you to say that you advertised 195 this property and sold it at the request contained in this letter, signed "R. H. T. Leipold"?

X A. 13. Of the commissioners; I did, sir.

X Q. 14. Was there any money passed between you and Mr. Leipold or the commissioners?

X A. 14. None but what they paid me for the auctioneer's expenses and my commissions.

X Q. 15. Was the credit that was entered upon that $2,000 note entered in your handwriting?

X A. 15. That I don't recollect. I recollect where it was done; it was done in the back room of the bank. Mr. Leipold was there. Whether he wrote it or I wrote it I do not know. I saw it done, however, by whomsoever it was done.

X Q. 16. Do you remember whether or not, on the back of that note, there had ever been a previous credit entered?

(Question objected to by Mr. Leipold, as the note, which is on file in the clerk's office of the court, will show for itself.)

X A. 16. I do not know.

196 X Q. 17. At all events the proceeds of this sale, outside of your commissions and auctioneer's expenses, went as a credit on that note?

X A. 17. Yes, sir; as of the day of sale.

WM. H. WARD.

GEORGE W. STICKNEY, a witness of lawful age, produced and sworn on behalf of the defendants, the commissioners of the Freedman's Savings and Trust Company.

Examined by Mr. LIEPOLD:

Q. 1. Mr. Stickney, state your name.

A. 1. George W. Stickney.

Q. 2. And your residence?

A. 2. Washington, D. C.

Q. 3. And age?

A. 3. Thirty-five.

Q. 4. What is your business?

A. 4. Real-estate agent, at present.

197 Q. 5. Have you ever had any connection with the Freedman's Savings and Trust Company?

A. 5. I have.

Q. 6. And what was such connection, and during what time?

A. 6. I was connected with the company from May, 1867, until July, 1874; part of the time as actuary, and part of the time as assistant actuary; assistant actuary from May, 1867, to August 1, 1872, and actuary from August 1, 1872, to the close of the bank.

Q. 7. I now hand the witness the original note of Holtzclaw & Bruff of $3,000, a copy of which has been filed as an exhibit in the case (handing note to witness), and ask him whether he ever saw that paper, and, if so, where?

A. 7. I have seen it before at the Freedman's Bank.

Q. 8. Did you have anything to do, in your character as an employee of the Freedman's Savings and Trust Company, with making the loan represented by this note?

198 A. 8. I did; I was assistant actuary at the time it was made, and it was made under my supervision.

Q. 9. How much money was advanced Messrs. Holtzclaw & Bruff upon that note, at the time that note was given?

A. 9. I cannot state positively about that; I think that there was a

note of $2,000 that was taken up with this note, and the balance in cash. The books will show what the transaction was, but that is my best recollection.

(Handing book to witness.)

Q. 10. Now, I hand Mr. Stickney a book, and ask him what book it is?

A. 10. It is the scratch-book of the loan-clerk—the original entry of the loan-clerk.

Q. 11. Now, look at the entries under July 13, 1872, the date of that note and say——

Mr. CHRISTY. (Interposing.) I would like to ascertain first whether those were entries that he (witness) made, or under his direction.

WITNESS. They were made by the loan-clerk under my direction.

Mr. CHRISTY. Were you personally——

199 WITNESS. (Interposing.) I simply handed the paper over to him—to Mr. Wyman—and he made the entries in that book.

Mr. CHRISTY. Then your knowledge of the subject ended then, when you handed him the papers?

WITNESS. Yes, sir.

Q. 12. (Mr. LEIPOLD to witness.) After refreshing your memory from that book——

(Mr. Christy interposes an objection to the witness refreshing his recollection from a book of memoranda in writing, which were not made or kept by himself.)

By Mr. LEIPOLD:

Is this the book of original entries covering loans made by the Freedman's Savings and Trust Company?

A. 12. It is.

(Mr. Smith. I object to this book being read as evidence.)

Q. 13. What does this book show, as to the amount advanced upon this note on the day of the date of the note?

200 (Question objected to by Mr. Christy, because it does not appear that this paper-writing was made by witness, or in the presence and under the eye of witness, and because that which purports to be a book is, in fact, a collection of loose sheets, not connected together, or having the appearance of ever having been so connected, and not paged. Mr. Smith joins in the objection stated by Mr. Christy.)

A. 13. It shows that $3,000 was advanced on the day of the date of the note.

Q. 14. To whom?

A. 14. To Holtzclaw & Bruff.

Q. 15. Now, Mr. Stickney, at the time that this $3,000 was advanced to Holtzclaw & Bruff upon this note, did Holtzclaw & Bruff file the several collateral securities enumerated on the face of that note?

A. 15. They did.

Q. 16. Did Holtzclaw & Bruff ever pay that note to you, or to the bank, while you were connected with it?

201 A. 16. Not the whole of it; in fact, they paid nothing on it; the endorsements on it come from the check of the real-estate association—they came from the collection of the checks of the Capitol Hill Building Association.

Q. 17. Did you ever have any conversation with either Holtzclaw or Bruff about the payment of this note, after it was given to the bank?

(Question objected to by Messrs. Christy & Smith.)

A. 17. I did; yes, sir.

Q. 18. Well, tell us what it was, if you remember.

A. 18. Well, that was simply that I tried to get them to pay it, and they said they would pay it as soon as they could.

Q. 19. Did you ever have any conversation with regard to this note, or any of the collateral given as security for it, with the defendant in this case, Mrs. Mary J. Wheeler?

A. 19. I did not.

202 Q. 20. Did you ever have any conversation, with regard to this note or any of collateral filed as security, with the complainant in this case, Mr. McCormick?

A. 20. I did; had several conversations with him.

Q. 21. Tell us all about it—what it was.

A. 21. He called at the bank several times in regard to the note. Told me that he had a third deed of trust secured on the house and furniture for $4,000, I think, and he further agreed to take care of this note, if he had to take the property, and if Mrs. Wheeler did not pay it, and acknowledged it to be a valid lien against the property, and that he knew it was there when he took the trust for $4,000.

Q. 22. Did he ever dispute either the existence of this note or the Mary J. Wheeler note, or dispute its validity in any way?

(Question objected to by Mr. Christy as leading.)

203 I want to know whether Mr. McCormick ever disputed the existence or the validity of the Mary J. Wheeler note, given as part of the collateral security for this note?

(Question objected to by Mr. Christy as still leading in form.)

A. 22. Not to my recollection.

Q. 23. Did you ever call upon Mr. McCormick to pay this note of Mary J. Wheeler, or any part of it?

A. 23. I think I did. I wrote to him that I should have to sell the property under that deed of trust—order it to be sold—unless there was something paid on the note, or the note paid in full.

(Answer objected to by Mr. Smith.)

Q. 24. Did he see you about it after that?

A. 24. He did.

Q. 25. What did he say, if anything?

A. 25. I think the last time I saw Mr. McCormick was in July or August, 1874, after the commissioners took charge of the bank.

Mr. SMITH. Were you still in charge?

Answer. No, sir; but I was still employed in the bank after the commissioners took charge, and he said that the property had depreciated in value, so that he didn't know whether he would try to

204 save anything out of his trust or not, but he wanted us to keep up a little while longer, to see if he could not do something, and see if he could not make some arrangements to pay.

(Mr. Smith, on behalf of Mrs. Wheeler, objects to the answer, upon the ground that Mr. McCormick's conversation cannot commit her in any way.)

By Mr. LEIPOLD:

Q. 26. Mr. McCormick had full knowledge of the existence of that trust, then, as well as that note?

(Question objected to by Mr. Christy as argumentative.)

A. 26. He did.

Cross-examination by Mr. CHRISTY:

X Q. 1. State who made the first entry upon that note. (Handing witness original of "Exhibit No. 1.")

X A. 1. It was made by Mr. Wyman, the loan clerk.

205 X Q. 2. Is it not in your handwriting?

X A. 2. No, sir.

X Q. 3. You recognize his handwriting?

X A. 3. Yes, sir.

X Q. 4. The next, in pencil, by whom was it made?

X A. 4. That was made by Mr. Wyman.

X Q. 5. Who, in fact, made all the entries upon that?

X A. 5. All were made by Mr. Wyman, except those figures there (indicating); they are the only ones I see there of mine.

X Q. 6. Have you any recollection of these payments independently of the entries on the note?

X A. 6. I have this recollection of the payments: that $2,000 check was left as collateral. Mr. George Gulick was the treasurer of the association. I called on Mr. Gulick in relation to the payment of the check, and he stated that somebody had used the money of the institution, but that he would——

X Q. 7. (Interposing.) I only called for the fact of payment, and not the declaration of third parties. I only want to know whether you have knowledge of the fact of payment, not the conversations.

206 X A. 7. Yes, sir; I have.

X Q. 8. Who paid the amount which appears to be entered here December 9, 1872, $403.67?

X A. 8. Well, I would have told you if you had let me. That amount was paid on the note of George F. Gulick, which was received from the $2,000 check; he gave five notes of $400 each.

X Q. 9. Mr. Gulick gave his personal notes?

X A. 9. Mr. Gulick gave his five personal notes of $400 each in place of the $2,000 check.

X Q. 10. Were those several notes paid?

X A. 10. They were.

X Q. 11. And the amounts in excess of the $400?

X A. 11. Is the interest on the $400 note; they were given for one, two, three, four, and five months.

X Q. 12. The entry here of $811.52 and interest seems to be in a different handwriting from the other entries upon the note. Will you please examine the note and tell us in whose handwriting that entry is, if you know?

207 X A. 12. That is entered by the same gentleman, only he is a little older.

X Q. 13. Do you know, independently of this entry, that this amount to wit, $811.52, was paid upon the note?

X A. 13. No, sir; I do not; that was all done after I left the bank, and I have no knowledge.

X Q. 14. I notice, amongst the endorsements, one indicating an extension of time for payment to its makers. Have you any knowledge of the fact of extension of time?

X A. 14. Yes, sir.

X Q. 15. At whose request was it made?

X A. 15. Mr. Bruff's.

X Q. 16. Had you any consent from Mr. McCormick to that extentsion?

X A. 16. All those were made on it before I knew that Mr. McCormick had any interest in the note.

By Mr. SMITH:

X Q. 17. Were any of those extensions made upon the request of Mrs. Wheeler?

208 X A. 17. No, sir; Mrs. Wheeler had nothing to do with that note.

X Q. 18. That is your opinion?

X A. 18. Yes, sir.

X Q. 19. Which note?

X A. 19. The note I am testifying to now.

X Q. 20. Had the forty shares of Capitol Hill Building Association stock, as mentioned on the face of this note, anything to do with the check of W. T. Johnson, the secretary, for $3,000; I mean, was it independent?

X A. 20. Yes, sir.

X Q. 21. What was the value of the forty shares of the Capitol Hill Building Association stock?

X A. 21. Of no value whatever.

X Q. 22. Do you mean to say by that that they were of no money value?

X A. 22. I do.

X Q. 23. At that time?

X A. 23. Yes, sir. My remembrance is that the forty shares had been taken up and ought to have been cancelled. I don't mean

209 to say that any of the others were of no value, but that these forty shares were not; that is, my investigation——

(Mr. Christy objects to the witness stating the result of his investigation.)

X Q. 24. Why do you say that these forty shares of Capitol Hill Building stock were of no value?

X A. 24. Because they were irregularly issued; that is, they had been taken up and cancelled once, and should have been in the association.

X Q. 25. What was the current value of the shares of the stock of the association?

X A. 25. As far as my knowledge goes, I think they had no value, even if they were genuine, at that time.

Mr. LEIPOLD. At what time do you mean?

Answer. At the time of the deposit, or when I gave them up; I got a receipt for them.

By Mr. SMITH:

X Q. 26. To whom did you surrender these forty shares of Capitol stock?

X A. 26. I don't remember whether to Mr. Bruff or to Mr. Gulick; one or the other.

X Q. 27. Well, your best recollection?

210 X A. 27. I cannot say; one or the other, but I cannot remember now.

X Q. 28. In what capacity, at that time, were you acting?

X A. 28. I was actuary of the Freedman's Bank.

X Q. 29. Well, being actuary of the Freedman's Bank at that time, you surrendered the stock?

X A. 29. Yes, sir.

X Q. 30. And to whom?

X A. 30. I answered as well as I remember.

X Q. 31. Either to Gulick or Bruff?

X A. 31. Yes, sir. I think there is a receipt among the papers for them, from whom I surrendered them to.

X Q. 32. Well, is that receipt within your reach?

X A. 32. No, sir.

X Q. 33. As actuary of the F. S. and T. Co. you surrendered that stock?

X A. 33. Yes, sir.

X Q. 34. As actuary of the company, to what extent were you authorized to surrender stock?

X A. 34. Well, I cannot answer that.

211 X Q. 35. You know your duties and powers, as to what extent you were authorized to surrender that stock; what right had you to surrender that stock?

X A. 35. I think I had a right to surrender it when I found that it was of no use, no value.

X Q. 36. You say that you do not know whether you surrendered that stock to Gulick or to Bruff?

X A. 36. I do not, and so say.

X Q. 37. Did either McCormick or Mrs. Wheeler authorize you to surrender that stock?

X A. 37. At the time it was surrendered I did not know Mr. McCormick in the transaction, and as Mrs. Wheeler's note was not due at that time, and Mr. Bruff claimed to be the owner of it, I did not think there was any need of my consulting Mrs. Wheeler.

(Mr. Christy objects to so much of the above answer as is argumentative, and Mr. Smith objects to the whole of it.)

X Q. 38. Did Mrs. Wheeler or Mr. McCormick authorize you to surrender that stock?

X A. 38. They did not.

212 X Q. 39. Was it customary, in notes of this character, to put down in the face of the note (as in this case of the Holtzclaw & Bruff note) the securities and the character of the securities lodged with the bank at the time of the discount of the note?

X A. 39. It was.

Redirect examination by Mr. LEIPOLD:

R. Q. 1. Mr. Stickney, how did you come to surrender this building association stock that was filed as part of the collaterals?

Answer. My remembrance now is that I made a compromise with the officers of the association, and with Mr. Bruff's consent, by which I gave that check up, Mr. Gulick's notes being delivered for the others. There was some little irregularity or other, so that I could not have collected either one without a law-suit, and I found that the securities there were worthless. The stock had been turned in, and should have been cancelled once, and reissued in some way.

213 (Mr. Christy objects to so much of the answer as of the nature of secondary evidence, and Mr. Smith objects to the whole of both question and answer.)

R. Q. 2. Was the matter of the surrender of this stock ever authorized by the board of directors of the Freedman's Savings and Trust Company?

(Question objected to by Mr. Smith because a corporation can only act by authority in writing.)

Answer. No, sir.

GEO. W. STICKNEY.

214 ROBERT H. T. LEIPOLD, a witness of lawful age, produced and sworn on behalf of the defendants, the Commissioners of the Freedman's Savings and Trust Company:

Mr. LEIPOLD. My name is Robert H. T. Leipold; age, thirty-seven; residence, Washington; I am one of the commissioners of the Freedman's Savings and Trust Company, and an attorney at law.

After the commissioners took charge of the assets of the Freedman's Savings and Trust Company, under the act of Congress approved June 20th, 1874, which was on the morning of July 13th, 1874, we found, among other assets of the Freedman's Savings and Trust Company, the original note of Holtzclaw and Bruff for $3,000, a copy of which has been filed as an exhibit in this case.

We also found, as collateral security to this note, the note of Mary J. Wheeler, dated July 1, 1872, for $2,000, and payable one year after the date of it to the order of R. W. Bruff, with ten per cent. interest,
215 and that note was endorsed in blank by R. W. Bruff.

Finding, from a memorandum in Mr. Stickney's handwriting on that note, that Mr. Michael McCormick had some interest in it, I wrote to Mr. McCormick and asked him to come to the bank.

He came to the bank. I spoke to him about the note; asked him to pay something on it, as it was about to outlaw, which he declined to do. I think I wrote to him more than once on the subject.

The last time he was at the bank, and I spoke to him about it, he declined to pay anything on the note; and I thereupon told him that we would have to proceed and have the trustee sell the property.

The commissioners, thereupon—or I, acting for the commissioners—wrote a note to Mr. Ward, which has been introduced in evidence here to-day, requesting him to proceed and sell the property under that deed of trust.

Before instructing or requesting Mr. Ward to act in the matter, I had ascertained that the property was subject to a prior deed of trust
216 to J. B. Wimer, I think, concerning a note of $5,000 held by General Myer.

I called upon Mr. Wimer, and asked him to inform us as to the amount due upon the note of Mr. Bruff, which was secured by a prior trust upon the property.

Mr. CHRISTY. I want to note an objection to conversations between Mr. Wimer and the witness as incompetent.

(For convenience it is agreed that either of the counsel present shall note such objections as he may desire to the answer of the witness after it shall have been completed.)

Mr. LEIPOLD. (Resuming.) Mr. Wimer came to see me at the bank; brought the original note and deed of trust with him; showed me the amount that was due; and also told me that Mr. McCormick had been paying some of the interest on that note (the Myer note); that the interest was then in arrear.

The amount then due on the $5,000 note (the Myer note) was the whole of the principal and $752.78 interest.

I requested Mr. Ward to proceed to sell the property, subject to the prior trust; stating to him, at the same time, that a part of the
217 property mentioned in the deed of trust of Mrs. Wheeler had been previously sold under a prior trust, as appears from the abstract which has been filed as an exhibit.

Mr. Ward advertised the property, and the sale took place on the

17th of March, 1876, and I attended the sale on behalf of the commissioners of the Freedman's Savings and Trust Company.

I heard the auctioneer then—to the best of my recollection, it was the auctioneer who announced the amount then due upon the prior deed of trust.

There were two or three bids at the time of the sale.

I started the bidding at $1,000.

The property was sold, subject to the prior trust of $5,000, and interest.

Some of the gentlemen present, and I think it was Mr. McCormick, offered, to the best of my recollection, $1,200.

The auctioneer cried another bid after that of $1,300.

I am unable to say who the person was that made that bid.

I then bid $1,400, and the property was then struck off to the commissioners.

218 We paid Mr. Ward from the purchase-money the sum of $66.91 on account of auctioneer's fees and advertising.

We paid Mr. Ward on account of trustee's fees the sum of $42.

We paid on account of improvement taxes the sum of $146.10.

We paid on account of one-half of the taxes for 1875–76, the sum of $41.02, and $4.10 penalty on that tax, leaving the sum of $1,099.87 as the net proceeds of the sale of the property, which we applied towards the payment of the Wheeler note, by applying $523.33 on account of interest to that date, to the day of sale, and the balance, $574.54, on account of the principal.

We also endorsed the proceeds of the sale upon the Holtzclaw & Bruff note.

*[Was there any other end'r's on the W. note then?]

We used it on the payment of that note, in the payment of the interest up to March 17th, 1876, the day of sale, and $811.52 on account of the principal of that note, which will be found endorsed on the note.

219 We gave Mr. Ward a receipt for $1,291.09, which was the proceeds of the property, less the auctioneer's expenses and trustee's fees.

Before, however, applying the proceeds in the payment of the Wheeler note, the commissioner paid, as I said before, taxes then due on the property, amounting to $191.22, which reduced the net proceeds, as I have stated, to $1,091.87, and that sum was applied in the payment of the Wheeler note.

To the best of my recollection there was quite a number of persons present at the sale, and there were several bids made.

It was a cloudy day, but not stormy. We subsequently brought a suit on the Wheeler note for the balance due, after endorsing the net proceeds of the sale, and recovered judgment.

And I want to refer, as part of my deposition, to the record in law cause No. 16205, which also contains the original Wheeler note.

After the sale Mr. Ward executed a deed to the commissioners, and it was put on record.

220 After the legal title had become vested in the Freedman's Savings and Trust Company, Mr. Wimer, acting for General Myer, the holder of the $5,000 note, called upon the commissioners for the payment of the accumulated interest, and subsequently, as the interest matured on the note (the note not being then due), he

* In pencil on margin in original.

would call for the interest, and the commissioners paid on account of interest on that note, and before its maturity, the sum of $1,040.

[* Only a Wimer request.]

[* You preferred to pay rather than have the sale under the Wimer deed.]

After the note matured, we wrote to Mr. Wimer, asking him if General Myer would not allow that note to run, and he replied that if we would enter into an agreement to continue to pay interest on the note at the rate of ten per cent. per annum, he would allow it to run. That we declined to do, and he thereupon threatened that he would have to sell the property under his trust.

Rather than have that done, the commissioners paid the $5,000 note, with $88.87 interest additional.

Mr. CHRISTY. At what rate was that?

Mr. LEIPOLD. That was at the rate of ten per cent. per annum, and that was the only interest that accrued upon the note after its maturity.

221 Having paid the note, Mr. Wimer released the deed of trust, and conveyed whatever interest he had previously in the property to the commissioners of the Freedman's Savings and Trust Company.

Mr. CHRISTY. Tell who Wimer was.

Mr. LEIPOLD. Mr. Wimer was the trustee named in the deed of trust given by Bruff to secure General Myer the sum of $5,000 and interest, and the deed of trust was prior in date and in record to that given by Mrs. Wheeler to Bruff.

(Mr. Leipold offers in evidence the deed of release from J. B. Wimer, trustee, and it is agreed between the counsel present that said original deed may be withdrawn after the testimony shall have been closed, upon the filing of a certified copy in lieu thereof.

Said deed is marked Exhibit No. 9, and hereto attached.)

(See pp. .)

222 Mr. LEIPOLD. (Resuming.) After the sale we notified Mr. Conant, formerly Assistant Secretary of the Treasury, who was then the tenant of the premises we purchased, that we had purchased the property, and that on and after the 17th of March, 1876, the day of sale, and that the rents should be paid to us—that we should expect him to pay the rents to us, which he did.

I saw Mr. McCormick after the sale on several occasions, with reference to a bookcase in the house, and a Latrobe stove, and we had some discussion about the propriety of the commissioners making him an allowance for those two improvements.

He, however, never objected to the sale, either to the regularity or validity of it in any shape or form, only expressing his regret that he had to lose so much money as he had vested or locked up in that house.

223 While the commissioners had possession of the property, from the 17th of March, 1876, until the 17th of March, 1879, we have collected in rents the sum of $1,344.71, and have expended, for insurance and taxes and repairs and commissions for collecting rents, and other minor matters, the sum of $488.69.

On or about the 17th of March, 1879, we were informed that Mrs. Wheeler had taken forcible possession of the premises, and we have ever since that time tried to recover possession, both at suit at law and by the proceedings in this case.

* In pencil on margin in original.

I believe that covers all I know about it.

(Mr. Christy and Mr. Smith reserve the right to make a formal objection to such portions of Mr. Leipold's answer as they may desire to object to, and they also reserve the right to cross-examine the witness.)

R. H. T. LEIPOLD.

Sworn to & subscribed before me this 19th day of March, 1880.

B. G. LOVEJOY,
Examiner.

224 GEORGE W. STICKNEY recalled.

By Mr. LEIPOLD:

Q. 1. Was there any conversation between you and Mr. Bruff as to the surplus, if any, arising from the payment of the Mary J. Wheeler note, being applied in the payment of the note of Caroline A. Sherman, a copy of which is filed as an exhibit in this case?

(Mr. Christy objects to the question, because it does not appear that this conversation was in the presence or hearing of the complainant, McCormick, and because it is otherwise incompetent, and calls for testimony otherwise incompetent and inadmissible.

Mr. Smith interposes a general objection on behalf of Mrs. Wheeler, and to the whole question.)

A. 1. I did, and the verbal agreement with Mr. Bruff was, that
225 any surplus arising from the $2,000 Wheeler note should be used by the bank to pay on the Sherman note.

Q. 2. Surplus after——

A. 2. (Interposing.) After payment of the $3,000 note.

(Having heard the answer of witness, counsel for McCormick makes the further objection that the testimony attempts to explain a contract existing between the bank and Bruff, which had been reduced to writing, as evidenced by the exhibits in the cause.

Counsel for complainant and Mrs. Wheeler reserve the right to cross-examine Mr. Stickney in reference to the above two questions and answers.)

GEO. W. STICKNEY.

Sworn to & subscribed before me this 18th day of M'ch, 1880.

B. G. LOVEJOY,
Examiner.

Adjourned to Monday, January 26th, 1880, at one o'clock p. m.

226 WASHINGTON, D. C., *Monday, January* 26, 1880.

Met pursuant to adjournment.

Present, Messrs. Leipold, Smith and Lovejoy.

Mrs. SARAH BURNETT, a witness of lawful age, produced and sworn on behalf of the defendants, the Commissioners of the Freedman's Savings and Trust Company.

Examined by Mr. LEIPOLD:

Q. 1. Mrs. Burnett, you will please give your name.

Answer. Sarah Burnett.

Q. 2. And your age?

Answer. I am sixty-four.

Q. 3. And your residence?

Answer, 138 Penn. avenue, southeast.

Q. 4. Did you ever have the custody of the keys, or the front-door keys, to 136 Penn. avenue, southeast?

Answer. Yes, sir; last spring or winter.

227 Q. 5. Who gave them to you or left them with you?

Answer. I think Mr. Sherman gave them to my husband and they were left at the house.

(Mr. Smith objects to above answer.)

Q. 6. What was the purpose for which the key was left at your house?

Ans. When any one came and wished to look at the house we might give them the keys to look at it; I think that was the purpose.

Q. 7. Well, now, will you please state how the present tenant of that house got possession of that property, to the best of your recollection?

Ans. Mr. McCormick came early in the morning, before breakfast, and asked if there was any one in the house, and if the keys were at our house.

He wished the keys, but afterwards declined taking them, and he said there would be a tenant in the house that day.

And at breakfast time there was a young man came and asked for the keys.

I did not like the looks of him altogether, and told him I did not like to give the keys without an order, but he said there were two ladies at the store near by wished to look at the house, and that he would

228 return them to me when they were done looking at the house; so I gave him the keys with that understanding. They were not returned. I sent for them, but they refused to give them up.

Q. 8. Do you know who it was that refused to give them up?

Ans. Well, it was some one in the name of Mrs. Wheeler, I think.

The young man said Mrs. Wheeler had possession of the property; and it was a young man that lived there, and he said Mrs. Wheeler had possession of the property, and that he was ordered not to give up the keys.

(Answer objected to by Mr. Smith.)

Q. 9. That is all you know about it?

Ans. That is all I know; yes, sir.

Mr. Burnett then went in; I think he had something to do with it afterwards.

Cross-examination waived by Mr. Smith.

SARAH BURNETT.
Per B. G. LOVEJOY,
Examiner.

229 JOSEPH F. BURNETT, a witness of lawful age, produced and sworn, on behalf of the defendants, the Commissioners of the Freedman's Savings and Trust Company.

Examination by Mr. LEIPOLD:

Q. 1. Give your name, your age, and your residence.

Ans. Joseph F. Burnett, 138 Penn. avenue, southeast; age, sixty-nine, about.

Q. 2. Mr. Burnett, you have heard the testimony given by your wife in this matter. Did you make any personal effort yourself to recover the keys from the person who had taken possession of the property referred to?

Ans. Well, sir, I know a good deal about the whole transaction. It occurred early in the morning, about breakfast time.

The keys were delivered without my being present, and on my return from Dr. Beale's, to whom I went to see on some medical advice—I had been sick the night previous—I discovered that the keys had been
230 delivered to these parties, under the circumstances just now stated by my wife.

After waiting a sufficient time, I thought they ought to be done with the keys, and I went in and made a demand for the keys. I rang the bell (the door was fastened) and a young man presented himself at the window; didn't come to the door. I asked him if he had done with the keys; that they were put in my possession for the purpose of showing the house to any one who might wish ts see it, and I wished them returned. He said he could not surrender the keys. I said, "Let me in the property."

He said "No."

I then said, "Well, tell me who is in possession of this property; I would like to know."

He said, "Mrs. Wheeler; and if you want anything, you must go and see her."

Said I, "I do not know Mrs. Wheeler in the matter at all," and after remonstrating, I said, "If you bring me an order from Mr. Sherman, who placed the keys in my hands, I will give them to whomsoever he may designate."

He declined doing so, and said I had better see Mrs. Wheeler; and I went away and reported the stage of the case to Mr. Sherman, immediately.

231 That is all that I know with regard to their admission into the house.

They kept possession of the house, I know, because I was at home late in the day and ascertained that they had been in possession all day—at least this young man was—whether Mrs. Wheeler or not, I don't know; they had been in possession, and taken in some articles of furniture, as if they were going to remain there.

Q. 3. And the same parties have continued in possession of the premises to this day?

Ans. Yes, sir; I believe the same parties have possession of the property. That was the 17th of March when they took possession—March, 1879. They have been there about a year.

(Mr. Smith reserves right to cross-examine this witness.)

JOSEPH F. BURNETT.

Sworn to & subscribed before me the 1st day of April, 1880.

B. G. LOVEJOY,
Examiner.

232 *Deposition of James B. Wimer.*

JAMES B. WIMER, a witness of lawful age, produced and sworn on behalf of the defendants, the Commissioners of the Freedman's Savings & Trust Company.

Examination by Mr. LEIPOLD:

Q. Mr. Wimer, please give your name, your age, and your residence.

A. James B. Wimer; 1919 Vermont avenue; age, thirty-four.

Ans. And your business?

A. Clerk.

Q. I show you Exhibit No. 3, being the deed of trust from Richard

W. Bruff and Jane C. Bruff, his wife, to J. B. Wimer, and ask you whether you are the Wimer that is there referred to as the trustee?

A. Yes, sir; there is no doubt about that.

Q. Now, Mr. Wimer, did you have anything to do yourself with the advance of the money to secure which this deed of trust was given?

A. Well, it passed from the principal to me; thence to Mid-
233 dleton and Company and to the parties making the trust.

Q. You acted for Mr. Myer in the capacity of agent?

Ans. Yes, sir.

(Mr. Smith objects to oral testimony in relation to this deed of trust.)

Q. Do you know of your own personal knowledge that the sum mentioned in that deed of trust, $5,000, was advanced by General Myer to Mr. Bruff?

A. Yes, sir; I have knowledge.

(Question and answer objected to by Mr. Smith.)

Q. It was advanced to him?

A. Yes, sir.

Q. Did Mr. Bruff ever pay any part of that note?

A. No; he did not pay any part of it.

(Question objected to by Mr. Smith.)

234 Q. If he had paid any part of it to General Myer would you know it?

A. I would, without doubt, I think, have known it.

(Question and answer objected to by Mr. Smith.)

Q. Did you have the note in your custody?

A. Well, I suppose I might say I had it in my custody—in General Myer's safe; yes.

Q. Did anybody else pay any interest on any part of the principal on that note?

A Well, now, give me one of those questions at a time please.

Q. I have asked you about Mr. Bruff; I now ask you, did any other person, before the sale of the property under the Wheeler trust—the second deed of trust—pay anything on account of that note, interest or principal?

A. They did not on account of the principal, but they did on account of the interest; they must have done so before that sale.

235 Q. Well, tell who did it.

A. M'. McCormick.

Q. Can you tell how much of the interest Mr. McCormick paid?

A. No; I cannot tell you; I can get at it I suppose.

Q. Look at this letter (handing paper to witness), and tell who it is written by.

A. It is written by J. B. Wimer, I reckon.

Q. Yourself?

A. Yes, sir.

Q. After looking at that letter, Mr. Wimer, can you state how much interest Mr. McCormick paid on that note?

A. No, sir.

Q. In making his payments on account of interest on this note, did Mr. McCormick ever dispute the validity of the note or the deed of trust in any way?

WITNESS. Of one note and deed of trust?

Mr. LEIPOLD. Yes, sir.

A. I think not; no, sir; if he did, he did not to me.

236 Q. He was fully aware of the existence of that deed of trust as a lien upon that property, was he not?

A. Well, he made himself virtually aware of it, by paying interest on it.

Q. Has the note been paid?

A. The note has been paid.

Q. Who paid it?

A. The Freedman's Savings and Trust Company.

Q. Can you tell the total amount that was paid by the Freedman's Savings and Trust Company to you?

(Mr. Smith objects to all questions and answers on this subject, as it is a matter of record.)

Q. Can you tell how much the total amount paid by the Freedman's Savings and Trust Company on account of the principal and interest on that note was?

A. I cannot from recollection.

Q. Can you find out from the record?

237 A. Yes, sir.

Q. Well, I wish you would do that. Before paying this note, was there any effort made by the Commissioners of the Freedman's Savings and Trust Company to have General Myer continue that loan?

A. I believe there was.

(Question and answer objected to by Mr. Smith.)

Q. What effort was made, and what was your reply, or what was the General's reply?

A. Well, as near as I can recollect, you wanted it renewed or continued at a lower rate of interest, to which he declined. It is several years ago; 1876, I think.

Mr. SMITH. If that request was in writing, I object to the oral testimony in relation to it.

By Mr. LEIPOLD:

Q. Look at that letter (handing paper heretofore shown to witness); who was that written by?

A. Myself.

238 Q. Was that the answer made or sent in reply to the commissioners' request for the continuation of the loan?

A. It does not acknowledge the receipt of that letter, but it would indicate—the writing—that it was a reply to it, and it no doubt was.

Q. Well, is that the reply to it—to the effort made by the commissioners?

A. It evidently is.

Mr. SMITH. Now, before that letter goes in, let him state whether the application was in writing or not.

WITNESS. I cannot say whether the application was in writing or not; I thought there was an application in writing, but there may have been a verbal application and a written reply. The fact of that letter not referring to any written application would indicate that there was none.

Mr. LEIPOLD. I will just ask the witness to read the letter. (To witness.) You say that was your answer: Now, read it.

239 (Mr. Smith objects to witness reading the letter.)

WITNESS (reading):

"WASHINGTON, D. C., *Nov.* 29, 1876.

"THE COMMISSIONERS FREEDMAN SAVINGS AND TRUST CO.,
"*Washington.*

"GENTLEMEN: General Albert J. Myer directs me to say that in the matter of the loan to R. W. Bruff, secured by deed of trust on premises 136 Penna. ave., purchased by you, by which purchase you have assumed the amount thus secured, that he is willing to extend the time for one year, provided you execute an instrument in writing, in form to be placed of record, binding yourselves to pay interest at the rate of 10% until the principal shall have been paid.

"Very respectfully,

"J. B. WIMER."

(Mr. Smith objects to the answer, because the letter is in writ-
240 ing; and, if it is insisted upon, the original must go in.

Mr. Leipold introduces in evidence the letter referred to, with the understanding that it may be withdrawn after conclusion of the testimony; the same is marked Exhibit No. 10, and hereto attached.

Mr. Smith objects to the letter "as a letter," because it comes under the head of the manufacturing of evidence for themselves, and for other reasons. It is understood that the endorsements on the back of the exhibit are not a part thereof.)

By Mr. LEIPOLD:

Q. Well, was the extension made, Mr. Wimer?

A. No, sir.

Q. It was not?

A. No, sir.

Q. The note was paid?

A. The note was paid after that.

Q. By whom.

A. By the Freedman's Savings and Trust Company Commissioners.

241 Q. And what further action did you take after the note was paid?

A. I must have executed a release, although I do not recollect the particulars of it now, but of course, I know I did it.

(Mr. Smith objects to further testimony on this subject.)

Q. That is all I wish of Mr. Wimer, except that I would like him to introduce a statement of the amount of interest paid on this note by Mr. McCormick, and the amount of principal and interest paid by the Commissioners of the Freedman's Savings and Trust Company?

A. That is in General Myer's books; I suppose there will be no difficulty in getting a copy, of course.

Q. Mr. Wimer, were you present at the time the property was sold by Mr. W. H. Ward, as trustee, under the trust of Mary J. Wheeler, of $2,000.00?

A. I was present at a sale; I do not know who the trustee was; the property was sold in my presence.

242 Q. Did you make a bid on the property at that time?

A. No.

Q. To whom was the property sold?

A. I think to the commissioners of the bank, the trust company.

Q. How many persons were present at the sale? Do you remember?

A. Well, somewhere from eight to a dozen in all.

Q. Was it stormy at the time of the sale?
A. My impression is that it was not.

Cross-examination by Mr. SMITH:

Q. Mr. Wimer, in executing this release, did you have any authority for it outside of the deed of trust?
A. Any authority for executing it, outside of the deed of trust? It was executed under the provisions of it, Judge.
243 Q. You executed this deed under the provisions of the deed of trust?
A. Yes, sir.
Q. Did McCormick or Mrs. Wheeler either have anything to do with you on that subject?
A. I do not think I ever heard from them in connection with it at all—in any connection.
Q. They made no request on you for executing this release?
A. I think not, sir.
Q. Did Mr. Bruff ever make any request on you for the execution of this release?
A. I never saw or heard from Mr. Bruff after the payment of the first one or two instalments of interest.
Q. Now, I understand that neither Mr. Bruff, Mr. McCormick, nor Mrs. Wheeler made no request on you for executing this deed of release.
(Mr. Leipold objects to all questions on this subject as immaterial.)
244 A. No, sir.
Q. I understand you to say that you were present at the sale under the Wheeler deed?
A. Well, I do not know anything about it; I assume that it was Mr. Ward's deed; I was present at a sale.
Q. Who was the auctioneer?
A. That I do not recollect.
Q. Did you make any communication to Mr. Ward of the existence of that deed of trust to you at that date?
A. No, sir.
Q. Did you direct or request Mr. Ward to sell under his deed of trust subject to your deed of trust?
A. No, sir.
Q. Was anything said by you or any other person to the auctioneer or to Mr. Ward, that day, in your hearing, touching the fact of the existence of your deed?
A. There was nothing said to me on that day by any one except Mr. Leipold.
245 Q. I mean was anything said to Ward, either by you or by Mr. Leipold, in your hearing, touching the existence of that deed?
A. No; not to my knowledge.
Q. In this letter of yours there was a proposition made that you would extend the time for one year provided they would pay you at the rate of ten per cent. interest. Was that made before the execution of this deed of release?
A. Most certainly, yes.
Q. Before the execution of the deed of release?
A. Yes, sir.
Q. I think you stated that there were from eight to a dozen persons present at that sale?

A. Well, from six to a dozen; I think I said eight to a dozen; there were a few there.

Q. Well, will you state who was there? Were any other officers of the bank there?

A. None that I knew to be such.

246 Q. Were there any other gentlemen there who had anything to do with your deed of trust, except you—Mr. Myer or any other gentleman?

A. No, sir.

(Mr. Smith reserves the right to further cross-examine the witness after the production of the statement called for by Mr. Leipold.)

Redirect examination by Mr. LEIPOLD:

Q. Mr. Wimer, how did you come to attend that sale?

A. Curiosity, solely.

Q. Was that all?

A. Yes, sir.

Q. Did you or did you not take any steps to foreclose the deed of trust under which you were trustee.

A. I gave a notification that I would if the money was not paid.

Q. Whom did you notify?

247 A. That I cannot say, without reference to my letters—whether the letter was written to Bruff or Johnson, or Johnson and Bruff both.

Q. Did you ever give any such notification to the commissioners of the Freedman's Bank, either verbally or in writing?

WITNESS. That we would sell?

Mr. LEIPOLD. Yes, sir.

A. I might have said so; I do not recollect how it was given positively.

Q. Wasn't it to protect your interests that you attended that sale, or General Myer's interest?

A. Well, it might be, but I did not think anything would occur that would necessitate it, but it was merely curiosity, as I said before.

Q. Did you look at the advertisement to see if it was worded so as to protect your trusts?

A. I read the advertisement; I do not think I examined it in that connection; I do not recollect whether I did or not; I possibly did.

248 Q. Do you remember whether there was a statement made at that sale as to the amount due on the deed of trust which you represented?

A. No, I do not.

Recross examination by Mr. SMITH.

Q. You say that you went there out of curiosity solely?

A. To see as to what was being done.

Q. Well, you did not go with the intention to bid?

A. No, sir; not by any means.

Q. Well, between those six and a dozen persons there did you see any competition in the way of bidding?

A. My recollection is that there was several bids; the competition was not great.

Q. Do you know who made any bid outside of the company?

A. No, sir; I do not know who did.

249 By Mr. LEIPOLD:

Q. Didn't you mention the fact to Mr. Stickney, as a represent-

ative of the bank, that if the note was not taken care of, you would sell the property?

A. I very probably did, but I do not recollect whether I did or not; but it is very certain that we would have been inclined to sell, if the payment had not been made, for our own protection.

(Question and answer objected to by Mr. Smith.)

Right to cross-examine this witness reserved to Mr. Christy.

250 *Deposition of Joseph T. Coldwell.*

JOSEPH T. COLDWELL, a witness of lawful age, produced and sworn on behalf of the defendants, the Commissioners of the Freedman's Savings and Trust Company.

Examination by Mr. LEIPOLD.

Q. Give your name and your residence and your business.

A. Joseph T. Coldwell, Washington City; real estate auctioneer.

Q. What was your business on the 17th day of March, 1876, Mr. Coldwell?

A. I was acting, sir, as salesman to B. H. Warner, real estate auctioneer.

Q. Did you on that day make a sale for William H. Ward, trustee, under a deed of trust given by Mrs. Mary J. Wheeler to secure a note of $2,000; and, if so, what property did you sell?

A. I do not know of my own knowledge that the trust was given by Mrs. Wheeler; only from hearsay. I made a sale for William H. Ward, trustee; I forget the number of the house; I think 136,
251 that was occupied by Mr. Conant.

Q. 136 what?

A. Pennsylvania avenue southeast, occupied by Mr. Conant, the 17th day of March, 1876.

Q. Did you at that time announce that the sale was to be made subject to a prior deed of trust and notify parties present as to the amount then due on that deed of trust?

(Mr. Smith objects to the form of above question.)

Q. Well, tell us what took place at that sale?

A. I read the advertisement stating that the property was to be sold subject to a prior deed of trust, made known at the day of sale. I stated, to the best of my knowledge and belief now, that the trust which the sale was subject to was $5,000.00, with accrued interest and some other expenses, smaller amounts that I do not recollect; but I have a distinct recollection that it was $5,000.00, the principal,
252 and I am almost sure that Mr. Leipold gave me the statement in writing that I read it from.

Mr. SMITH. In writing or printing?

A. In writing, the statement.

By Mr. LEIPOLD:

Q. Now, Mr. Coldwell, how many persons were there present at the sale?

(Mr. Smith here notes an objection to the testimony of the witness in respect of the written statement; if the statement was in writing, it should be produced.)

A. It was $5,000.00 and interest, to the best of my recollection, that I read from the statement.

(Last question repeated.)

A. As much property as I sell it would be hard for me to say, but I think Mr. Wimer is correct, about a dozen persons.

Mr. SMITH. He said from six to a dozen.

A. Yes, from six to a dozen persons.

By Mr. LEIPOLD:

Q. How many bids were made on that property, to the best
253 of your recollection?

A. Well, I have so many sales, I cannot answer, but to the best of my belief there must have been three or four bids, judging from the amount at which it was sold.

Q. Now, what was the character of the weather at the time of the sale?

A. I will not be positive about that; I think there was a little snow on the ground, and it was about as cold as we generally have it at that season of the year.

Q. Was it storming?

A. No, sir; I was going to say in regard to that, the best evidence in the world is my book (exhibiting book opened at page dated March 17, 1876); it was not storming on that day, sir, or there would have been something on that page.

Mr. SMITH. You say there was a little snow on the ground?

A. Yes, sir, I think it had snowed a few days before.

254 Mr. LEIPOLD. How did the attendance at that sale compare with the general attendance at sales?

A. A very good attendance, sir, and a good deal better than usual.

Cross-examination.

By Mr. SMITH:

Q. Do you recollect the name of any person that bid outside of the company?

A. I cannot recollect; I suppose I have sold since that time 2,500 houses or lots.

J. T. COLDWELL.

Sworn to and subscribed before me this 8th day of March, 1880.

B. G. LOVEJOY,
Examiner.

255 Mr. Leipold introduces in evidence three letters, signed by R. H. T. Leipold, of the com'rs, dated May 25th, 1875, July 12th, 1875, and November 24th, 1875, each addressed to Michael McCormick, esq.; the same are marked respectively "Exhibit No 11," Exhibit No. 12," and "Exhibit No. 13," and hereto attached.

Mr. Smith objects to the introduction of the said letters.

Adjourned to Thursday, January 29th, 1880, at one o'clock, p. m.

256 WASHINGTON, D. C., *Thursday, January* 29, 1880.

Met pursuant to adjournment.

Present, Messrs. Leipold, Smith, and Lovejoy.

Mr. Leipold introduces in evidence three letters, signed by R. H. T. Leipold, "of the com'rs," dated December 17th, 1875, February 24th, 1876, and October 19th, 1876; they are marked respectively "Exhibit No. 14," "Exhibit No. 15," and "Exhibit No. 16," and hereto attached.

Mr. Smith objects to the introduction of the said letters.

Mr. Leipold also produces and introduces in evidence the statement which Mr. Wimer, at the last examination, was requested to furnish, for the purpose of corroborating the testimony given by him (Mr. Leipold) respecting the amount paid by the commissioners of the Freedman's Savings & Trust Company on account of interest on the Meyer loan, &c.; said statement is marked "Exhibit No. 17," and hereto annexed.

Mr. Smith objects to the introduction of the same.

257 *Cross-examination of Mr. Leipold.*

Cross-examination of Mr. Leipold by Mr. SMITH:

Q. Did the F. S. & T. Company, as a corporation, have a seal of of office?

A. It did.

Q. And did that seal of office pass into the possession of the commissioners?

A. I think it is in the bank.

Q. Have you ever used that seal in any of your business as commissioner?

A. Not as far as I can remember.

Q. In what manner do you transact business in the way of coming to a conclusion among yourselves to do or not to do a particular thing as commissioners?

A. The ordinary routine business of the bank is attended to under my immediate supervision; matters of importance requiring the exercise of discretion are talked over by the three commissioners, and the execution of the conclusion is left to myself principally.

258 Q. Is there any board of trustees authorized now, since you became commissioners, to direct you in any way?

A. No, sir; that is precluded by the act of Congress under which we were appointed.

Q. The commissioners, then, have the entire control?

A. Yes, sir.

Q. In reference to the order given by you to Ward to sell that property, did the commissioners have any conference—formal conference—about it; and, if so, was that conference ever reduced to writing?

A. I think no formal conference took place between us as to that matter; but the other commissioners were cognizant of the fact.

Q. Was there ever any regular resolution of the three commissioners authorizing you to direct Ward to sell that property?

A. There was not, and we do not know of such a thing in our deliberations as a resolution; it was understood between us, and agreed

259 that as fast as the several cases of overdue paper could be reached they should be collected as soon as possible.

Q. Then I understand you to say that the commissioners in a body did not pass any resolution or come to any conclusion to instruct Ward to sell the property as a body?

A. Oh, yes; they came to the conclusion to fore' that mortgage, but not by formal resolution.

Q. Well, did they instruct you by any formal resolution to buy the property for the bank?

A. They did not; it was understood by the commissioners, or it was agreed among the commissioners, that one of the commissioners should attend every such sale, and that we should bid cautiously on the property up to its full value, within the claim of the bank.

Q. In purchasing that property at that sale, did you have any motive except the motive of collecting the debt?

A. None whatever.

260 Q. Well, before you made the purchase at the Ward sale, you knew the existence of Mr. McCormick's claim?

A. I knew that the property belonged to Mr. McCormick, and that it was under his control; that he was collecting the rents from it.

Q. In regard to the payment of the $5,000.00 on the Wimer and Myer encumbrance or mortgage, was there any formal instructions by resolution authorizing you or any commissioner to pay that?

A. After the Myer note became due we were averse to paying it, hoping to be able to effect a sale of the property subject to that deed of trust. We wrote to either Mr. Wimer, or General Myer—and asked him whether he would not extend the loan—a copy of that letter I have introduced in evidence; and he replied, if we were willing to execute an agreement to continue to pay interest at the rate of ten per cent. per annum he would extend it. After bringing that letter to the attention of the other two commissioners, we concluded that we

261 had better pay the trust rather than to continue to pay ten per cent. interest. The commissioners acted jointly on that. The endorsement of two of the commissioners is on "Exhibit No. 10;" and thereupon we paid the amount of the note, with interest to that day—to the day of payment—at ten per cent.

Mr. SMITH. I object to the answer as given by the witness, not having been called for by my question; the question was whether or not the commissioners had, by any formal resolution, authorized the payment of that money.

A. (Continuing.) They did not authorize me by any formal resolution, as I have already said; there never was a transaction which was authorized by the commissioners by a formal resolution; that is not the manner in which we do business. I want to say here that upon payment of that note it was transferred to us.

(Mr. Smith objects to above answer as not responsive to the question.)

262 Q. Is there any book in your possession in which the transaction between Wimer and yourself on the subject of that encumbrance is recorded?

Mr. LEIPOLD. What do you refer to? The correspondence between us?

Mr. SMITH. Yes; the matter of the determination of the commissioners or anything of the kind. Was there any formal book, was there any memoranda or book of record showing the transaction?

A. The determination of the commissioners to pay that loan is indicated on the back of Exhibit No. 10.

Q. Well, that you recollect is not in testimony yet; it was expressly understood that the letter was to go in without the endorsement.

A. Well, I put it in now. I speak of Exhibit No. 10 and the endorsement.

Q. The paper is in evidence, but it was expressly understood at the time that the endorsements were not to go in.

263 A. Well, I am putting them in now; you ask me about the record, and I say now the record is on the back of Exhibit No. 10.

Q. Is that the only record?

A. Except the sums of money paid; they appear on the books of the bank.

Q. In reference to the endorsement on Mrs. Wheeler's note of this

money growing out of the sale of Ward's, do you recollect whether there was any prior endorsement of any sort on the note or not?

A. I do not.

Q. What is your best recollection whether there was any credit on it prior to that?

A. There may have been a credit of interest, but I do not remember.

Q. Well, I would like you to make that Wheeler note an exhibit with your evidence.

A. Well, I have already referred to it, and it is in the custody of the court.

264 Q. In reference to requesting McCormick to pay something on the Wheeler note, did you ever request him to pay "at least as much as five dollars" in that language or anything like it?

A. I might have said that; my object was to keep the note from outlawing—my first object was.

Q. In whose handwriting is the credit entered on the Wheeler note?

A. Mr. Wyman's, the loan clerk of the commissioners.

Q. By whose instructions?

A. Mr. Ward's, and in his presence I believe; that is, the credit arising from the sale of the property.

Mr. SMITH. Yes, that is what I mean.

(Right to cross-examine Mr. Leipold reserved to Mr. Christy.)

R. H. T. LEIPOLD.

Sworn to and subscribed before me this 19th day of March, 1880.

B. G. LOVEJOY,
Examiner.

265 Counsel for the commissioners of the Freedman's Savings and Trust Company rests his case here.

Adjourned to Tuesday, February 3rd, 1880, at one o'clock p. m.

DISTRICT OF COLUMBIA,
County of Washington, ss:

I, B. G. Lovejoy, examiner in chancery, do hereby certify that the foregoing depositions in behalf of the plaintiff and the defendants, J. A. Cresswell and others, were taken down and by me reduced to writing from the statements of the witnesses, who were first duly sworn to tell the truth, the whole truth, and nothing but the truth; that the depositions were read over to the respective witnesses, and by them signed in my presence, except that of Mrs. Sarah Burnett, whose deposition was signed by me after having notified and requested said Sarah Burnett to sign the same, and being informed by her husband that she was too unwell to appear and do so. I further certify that I am not of counsel nor in any way interested in said cause.

B. G. LOVEJOY,
Examiner in Chancery.

266 In the supreme court of the District of Columbia.

MICHAEL MCCORMICK
vs.
JOHN A. J. CRESSWELL ET AL. } Eq. 6690.

WASHINGTON, D. C., *Tuesday, February 3d*, 1880.

At request of Mr. Smith, examination postponed to Friday, February 6th, 1880, at one o'clock p. m.

WASHINGTON, D. C., *Friday, Feb. 6th*, 1880.

Met pursuant to postponement.

Present, Robert Christy, esq., counsel for complainant; Enoch Totten, esq., cou'sel for commissioners of the Freedman's Savings and Trust Company; William R. Smith, esq., counsel for Mrs. Wheeler, and the examiner.

At request of Mr. Smith, examination adjourned to Wednesday, February 11th, 1880, at two o'clock p. m.

267 WASHINGTON, D. C., *Wednesday, Feb. 11th*, 1880.

Met pursuant to adjournment.

Present, Mr. Totten, counsel for com'rs F. S. & T. Co.; the examiner. No one appearing in behalf of the defendant Mrs. Wheeler, after waiting half an hour, at 2.30 o'clock p. m. adjourned until further notice.

At 2.35 o'cl'k, Mr. Smith and witnesses having arrived, reassembled.

268 Mr. RICHARD W. BRUFF produced and sworn on behalf of the defendant Mrs. Wheeler.

Examined by Mr. SMITH:

Q. 1. Mr. Bruff, please state your residence and business and name, etc.

Ans. My residence is 624 Penn. avenue SE.; business, carpenter and builder.

Q. 2. I call your attention to the original deed of trust here, signed by Mrs. Wheeler (handing witness Exhibit No. 6); see pp.). Just examine that, if you please, and see if you have ever seen it before. Have you any knowledge of ever having seen that before?

Ans. Well, I cannot say positively whether I ever have or not. I think it is likely that I have, though.

Q. 3. Do you recollect a transaction in which a deed of trust was made to you by Mrs. Wheeler as security of a certain promissory note of the same date for $2,000, the note being made by Mrs. Wheeler also?

Ans. Yes, sir.

269 (It is admitted by respective counsel that the $2,000 note referred to in above question is the same one hereinbefore mentioned and involved in said cause No. 16205.)

Q. 4. State now, if you please, the circumstances under which you received that note and that deed of trust, if you ever received the deed of trust, and from whose hands you received them.

Ans. I received the note and deed of trust through Mr. Johnson—from Mr. Johnson. It is my opinion, also, that I also received the deed of trust and recorded it myself; that is the best of my recollection.

Q. 5. Previously to the reception of that deed of trust and note from Mr. William T. Johnson, had you ever any negotiation or conversation with Mrs. Wheeler on the subject of the note or the deed of trust?

Ans. No, sir.

Q. 6. State whether or not Mrs. Wheeler, at the time of your receiving that note and deed of trust, was indebted to you in any amount of money.

(Question objected to by Mr. Totten, as immaterial and improper in this investigation.)

270 Ans. Mrs. Wheeler did not owe me any money.

money growing out of the sale of Ward's, do you recollect whether there was any prior endorsement of any sort on the note or not?

A. I do not.

Q. What is your best recollection whether there was any credit on it prior to that?

A. There may have been a credit of interest, but I do not remember.

Q. Well, I would like you to make that Wheeler note an exhibit with your evidence.

A. Well, I have already referred to it, and it is in the custody of the court.

264 Q. In reference to requesting McCormick to pay something on the Wheeler note, did you ever request him to pay "at least as much as five dollars" in that language or anything like it?

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Q. In whose handwriting is the credit entered on the Wheeler note?

A. Mr. Wyman's, the loan clerk of the commissioners.

Q. By whose instructions?

A. Mr. Ward's, and in his presence I believe; that is, the credit arising from the sale of the property.

Mr. SMITH. Yes, that is what I mean.

(Right to cross-examine Mr. Leipold reserved to Mr. Christy.)

R. H. T. LEIPOLD.

Sworn to and subscribed before me this 19th day of March, 1880.

B. G. LOVEJOY,
Examiner.

265 Counsel for the commissioners of the Freedman's Savings and Trust Company rests his case here.

Adjourned to Tuesday, February 3rd, 1880, at one o'clock p. m.

DISTRICT OF COLUMBIA,
County of Washington, ss:

I, B. G. Lovejoy, examiner in chancery, do hereby certify that the foregoing depositions in behalf of the plaintiff and the defendants, J. A. Cresswell and others, were taken down and by me reduced to writing from the statements of the witnesses, who were first duly sworn to tell the truth, the whole truth, and nothing but the truth; that the depositions were read over to the respective witnesses, and by them signed in my presence, except that of Mrs. Sarah Burnett, whose deposition was signed by me after having notified and requested said Sarah Burnett to sign the same, and being informed by her husband that she was too unwell to appear and do so. I further certify that I am not of counsel nor in any way interested in said cause.

B. G. LOVEJOY,
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JOHN A. J. CRESSWELL ET AL. } Eq. 6690.

WASHINGTON, D. C., *Tuesday, February 3d*, 1880.

At request of Mr. Smith, examination postponed to Friday, February 6th, 1880, at one o'clock p. m.

WASHINGTON, D. C., *Friday, Feb. 6th*, 1880.

Met pursuant to postponement.

Present, Robert Christy, esq., counsel for complainant; Enoch Totten, esq., cou'sel for commissioners of the Freedman's Savings and Trust Company; William R. Smith, esq., counsel for Mrs. Wheeler, and the examiner.

At request of Mr. Smith, examination adjourned to Wednesday, February 11th, 1880, at two o'clock p. m.

267 WASHINGTON, D. C., *Wednesday, Feb. 11th*, 1880.

Met pursuant to adjournment.

Present, Mr. Totten, counsel for com'rs F. S. & T. Co.; the examiner. No one appearing in behalf of the defendant Mrs. Wheeler, after waiting half an hour, at 2.30 o'clock p. m. adjourned until further notice.

At 2.35 o'cl'k, Mr. Smith and witnesses having arrived, reassembled.

268 Mr. RICHARD W. BRUFF produced and sworn on behalf of the defendant Mrs. Wheeler.

Examined by Mr. SMITH:

Q. 1. Mr. Bruff, please state your residence and business and name, etc.

Ans. My residence is 624 Penn. avenue SE.; business, carpenter and builder.

Q. 2. I call your attention to the original deed of trust here, signed by Mrs. Wheeler (handing witness Exhibit No. 6); see pp.). Just examine that, if you please, and see if you have ever seen it before. Have you any knowledge of ever having seen that before?

Ans. Well, I cannot say positively whether I ever have or not. I think it is likely that I have, though.

Q. 3. Do you recollect a transaction in which a deed of trust was made to you by Mrs. Wheeler as security of a certain promissory note of the same date for $2,000, the note being made by Mrs. Wheeler also?

Ans. Yes, sir.

269 (It is admitted by respective counsel that the $2,000 note referred to in above question is the same one hereinbefore mentioned and involved in said cause No. 16205.)

Q. 4. State now, if you please, the circumstances under which you received that note and that deed of trust, if you ever received the deed of trust, and from whose hands you received them.

Ans. I received the note and deed of trust through Mr. Johnson—from Mr. Johnson. It is my opinion, also, that I also received the deed of trust and recorded it myself; that is the best of my recollection.

Q. 5. Previously to the reception of that deed of trust and note from Mr. William T. Johnson, had you ever any negotiation or conversation with Mrs. Wheeler on the subject of the note or the deed of trust?

Ans. No, sir.

Q. 6. State whether or not Mrs. Wheeler, at the time of your receiving that note and deed of trust, was indebted to you in any amount of money.

(Question objected to by Mr. Totten, as immaterial and improper in this investigation.)

270 Ans. Mrs. Wheeler did not owe me any money.

Q. 7. Now, state fully the circumstances under which you got that note and deed of trust from Mr. Johnson.

Ans. Mr. Johnson and I dealt in the transaction altogether; I did not know Mrs. Wheeler in the matter. I went to him and stated that I was in need of money, and wanted to know whether Mrs. Wheeler would give a deed of trust note on that property. He had informed me this *this* property was for Mrs. Wheeler, although he was actually the purchaser of it; and he said he was not certain about it, and objected to it. I told him I was in very much need of money; and he said then that he thought he could get it for me, and he did so. I wished to raise some money, and that was the only way I could raise so large an amount. We had been using accom'odation paper—$500 or $600—and I wished to raise a larger amount, and that was the reason we had to get the note secured by deed of trust, and that was the reason I got the deed of trust—to raise the money I wished.

271 Q. 8. At what place and under what circumstances were the note and deed of trust written, and by whom?

Ans. Well, I think the deed of trust and note were written there in his office.

Q. 9. In Mr. Johnson's office?

Ans. In Mr. Johnson's office.

Q. 10. Well, after the deed of trust and note were written, what happened after that with reference to the deed of trust and note?

Ans. Mr. Johnson took the deed of trust away and had it acknowledged, I think, and brought it back to me.

Q. 11. Well, how about the note?

Ans. Also the note endorsed.

Q. 12. Signed, you mean?

Ans. Signed, rather.

Q. 13. Well, when he brought them back, what happened then; did he give you the deed and note?

Ans. He gave me the deed and note.

Q. 14. You received them then from Mr. W. T. Johnson?

Ans. From Mr. W. T. Johnson.

272 Q. 15. Well, Mr. Bruff, here is a blank deed of release, with your signature attached to it (handing witness Exhibit A; see pp. annexed to Mrs. Wheeler's answer to cross-bill filed Oct. 30, 1879). Please examine that, and see if that is your signature, and state whether or not that was written at the time the deed and note spoken of were written.

(Question objected to by Mr. Totten, as immaterial.)

Ans. Yes, sir; that is my signature.

Q. 16. Did you execute that at the same time that Mr. Johnson had the note and deed of trust prepared in his office?

Ans. I cannot say positively as to the same time; it was about the same time. Mr. Johnson stated that probably I might be out of the way when the note was settled, and he wished to have that so that he could fill it up in case any accident should occur, that I should not be on hand.

Q. 17. After you got possession of the note and deed of trust, what disposition did you make of them?

Ans. I think I put the deed of trust on record, but I was not
273 able to use the note and deed of trust directly; I did use it subsequently at the Freedman's Bank.

Q. 18. Well, state how it was used at the Freedman's Bank.

Ans. To the best of my recollection it was left there as collateral for a $3,000 note, left there with other collaterals for a $3,000 note.

Q. 19. By whom was that $3,000 note signed?

Ans. Signed by the firm of Holtzclaw & Bruff; by me as financial manager.

Q. 20. (Handing to witness Exhibit No. 1; see pp. .) Just look over that copy, Mr. Bruff, and see whether that is a copy of the $3,000 note you refer to.

Ans. Yes, sir; it is.

Q. 21. It was left as collateral then for this note, dated 13th of July, 1872, a copy of which is exhibited to you?

Ans. Yes, sir.

Q. 22. At the time that you left that note as collateral, what consideration did you receive from the bank—whether in cash or in any other way?

274 Ans. I think it was equivalent to cash, $3,000.

Q. 23. You think it was equivalent to cash?

Ans. Yes, sir.

Q. 24. Well, state how much of it was cash, and state whether it was for a precedent debt, or part of it, as near as you can recollect.

Ans. I cannot recollect whether any portion of it took up a previous note or not. I have always had the opinion that I received the $3,000 in cash.

Mr. TOTTEN. Do you say that is your opinion?

WITNESS. Yes, sir.

Mr. TOTTEN. Is that your opinion now?

WITNESS. Yes, sir.

Q. 25. (By Mr. SMITH.) Do you recollect whether or not at the time of that transaction you were indebted to the bank in any paper or not, past or about due?

Ans. I have no recollection of any except this Sherman note there.

Q. 26. Well, do you recollect whether at the time of the transaction Mr. Stickney did not give you up a $2,000 note that you owed the bank at that time?

275 Ans. I cannot recollect it; it might have been so; it has been so far back.

Q. 27. Mr. Bruff, what was the value of this stock that was put in there—these 40 shares of Capitol Hill Building Association stock that were put in there as accompanied with this $3,000 check?

Ans. I think it was in the neighborhood of $1,200.

Q. 28. The value of it, the whole of it?

Ans. Yes, sir; as well as I can recollect at this date.

Q. 29. Did you make any agreement with the bank, at that time, that this $2,000 note should stand as collateral security also for the Sherman note, or any part of the Sherman note?

Ans. I think it likely it might have been mentioned.

Q. 30. Have you any recollection of it?

Ans. I have no recollection about that. I have an impression though that it was mentioned.

Q. 31. You do not know to what extent?

276 Ans. I do not know to what extent. (After a pause.) Yes; I think it settled the Sherman note; I think that was the understanding.

Q. 32. It settled the Sherman note?

Ans. Yes, sir. I know I recollect of once asking Mr. Stickney for the

Sherman note, and he told me that Mrs. Sherman could get it at any time she came. I recollect that pretty well.

Q. 33. Well, what position did Mr. Stickney occupy in the bank at that time?

Ans. I do not exactly know what position he had there.

Q. 34. Well, he was the man you dealt with?

Ans. Yes, sir.

Cross-examination by Mr. TOTTEN:

X Q. 1. How long have you lived in the city of Washington?

Ans. Well, off and on for 30 years.

X Q. 2. What business were you engaged in at the time this note of Mrs. Wheeler's was taken by you?

Ans. Carpenter and builder.

X Q. 3. What was the firm of Holtzclaw and Bruff; what business were they engaged in?

Ans. Carpenters and builders.

X Q. 4. What has become of Holtzclaw?

Ans. He still resides in the city.

277 X Q. 5. What business are you engaged in now?

Ans. Carpenter and builder.

X Q. 6. What was the pressing emergency on you in July, 1872, that you wanted this $2,000?

Ans. Well, I was building pretty heavily on my own responsibility, through the building association—money gotten in that way, and wanted to borrow money to purchase building association stock. I was building pretty heavily in the building associations.

X Q. 7. You stated that you could not get $2,000, or so large a sum as that upon accom'odation paper, and that you had been getting money on accom'odation paper. What do you mean by accom'odation paper; whose paper was it?

Ans. Promissory notes; Mr. Johnson would sometimes exchange notes with me.

278 X Q. 8. You were dealing with Mr. Johnson in these transactions?

Ans. Yes, sir.

X Q. 9. Well, is that this same W. T. Johnson mentioned in the cross-bill of Mrs. Wheeler as her son-in-law?

Ans. Yes, sir.

X Q. 10. William T. Johnson, is it?

Ans. Yes, sir.

X Q. 11. Where does he live?

Ans. I do not know the number of the house.

X Q. 12. Does he live in this city?

Ans. He lives in this city.

X Q. 13. What is his business?

Ans. I believe he is a lawyer now.

X Q. 14. What was he then?

Ans. He was a real estate agent then, and secretary of several building associations and an insurance agent.

X Q. 15. Was he secretary of this Capitol Hill Building Association at that time?

Ans. Yes, sir.

X Q. 16. I see that there was some stock mentioned of that company, which was put up as collateral security?

Ans. Forty shares.

X Q. 17. And a check of W. T. Johnson as secretary; was that as secretary of the Capitol Hill Building Association?

Ans. Yes, sir.

279 X Q. 18. What became of that?

Ans. That I do not know. It was left at the bank, but I suppose that Mr. Gulick got that in the settlement with the bank.

X Q. 19. Mrs. Wheeler charges in her cross-bill that you and Johnson got up a conspiracy to cheat her out of this money. Is that so?

Ans. I have no knowledge of it.

X Q. 20. She says this note and deed of trust for $2,000 were obtained from her through a fraudulent negotiation.

Ans. I was no party to it, if it was.

X Q. 21. You did not know Mrs. Wheeler at all?

Ans. I was acquainted with her, but had nothing to do with her in this matter.

X Q. 22. Did you see her, or converse with her at all, about this transaction?

Ans. No, sir.

X Q. 23. Did you think it was all right when you de'lt with it?

Ans. Yes, sir.

X Q. 24. What makes you say that this Sherman note was paid in this transaction? Don't you know the fact to be that it was not paid at all?

Ans. No, sir; I think the understanding was, with Mr. Stickney and myself, that the note should be considered settled.

280 X Q. 25. Well, by what; settled by what?

Ans. By what would be left of this collateral that was left there—that note of $2,000, and the check of the building association for $3,000 with $1,000 paid on it, would make $4,000.

X Q. 26. Well, that check was good for nothing, wasn't it?

Ans. No, sir; it was good.

X Q. 27. What right had the secretary of the building association to draw checks upon it?

Ans. It was drawn on the treasurer of the association, and the treasurer had paid me $1,000 on it, and by an arrangement I had made he agreed to pay interest for one month to the bank, and get the $2,000, and take up the note when it became due.

X Q. 28. Who was the treasurer?

Ans. Mr. Gulick.

X Q. 29. George F. Gulick?

Ans. Yes, sir.

X Q. 30. He was the treasurer and Johnson was secretary?

Ans. Yes, sir.

X Q. 31. Well, have you anything more than an impression about the payment of the Sherman note?

Ans. I am positive about that, because I know I asked Mr. Stick-

281 ney about that, and that was the answer he gave me; that Mrs. Sherman could get the note at any time she came for it.

X Q. 32. Well, then, you did not get anything out of these notes?

Ans. I got $3,000.

X Q. 33. That was the $3,000 coming out of the W. T. Johnson check?

Ans. No, sir; that was the real estate of Mrs. Wheeler; I think that was the understanding, as well as I can recollect.

X Q. 34. Then how much money did you get out of this bank? There was $2,000, and interest paid on the Sherman note.

(Mr. Smith objects to the suggestion in above question.)

Ans. No, sir; a portion of that had been paid.

X Q. 35. There had been?

Ans. Yes, sir.

X Q. 36. How much?

Ans. I cannot recollect now.

X Q. 37. Was Mr. Johnson indebted to you at the time of this transaction?

(Question objected to by Mr. Smith.)

Ans. He probably was.

X Q. 38. What was the consideration between you and Johnson for this $2,000 note, delivered to you from Mrs. Wheeler?

282 (Question objected to by Mr. Smith as irrelevant; the pleadings set up no contract between Johnson and Bruff; it is entirely outside of the question at issue.)

Ans. I suppose the money in payment of this house.

X Q. 39. Which house?

Ans. That was deeded to Mrs. Wheeler?

X Q. 40. Upon which this deed of trust was given?

(Above questions and answers objected to by Mr. Smith.)

X Q. 41. Well, did you sell that house to Mrs. Wheeler?

(Question objected to by Mr. Smith, because the deed under which the commissioners of the F. S. & T. Co. claim asserts that fact, and they assert in their cross-bill that Bruff and wife conveyed a fee simple to Mrs. Wheeler, and also they claim under a deed of trust from Mrs. Wheeler to Ward, asserting a fee simple title to the property in Mrs. Wheeler, and both the deeds are exhibits in this case.)

Ans. Yes, sir.

X Q. 42. You sold it to her?

Ans. Yes, sir.

X Q. 43. How much money was there still due to you from Mrs. Wheeler for the purchase-money of that house at this time—July, 1872?

283 Ans. That I cannot state.

X Q. 44. Well, tell me about how much.

(Question objected to by Mr. Smith, because it is an assumption, the witness having already stated that she owed him nothing.)

Ans. I had no dealings with Mrs. Wheeler in this matter at all.

X Q. 45. Was there anything due to you from anybody for the purchase-money of that house?

(Question objected to by Mr. Smith.)

Ans. Yes, sir; I think there was something due.

X Q. 46. How much?

Ans. I think it was likely $2,000 due, about.

X Q. 47. When you took that $2,000 trust from Mrs. Wheeler you had that $2,000 in your mind, hadn't you?

(Question objected to by Mr. Smith.)

Ans. That was what I supposed the amount of the indebtedness.

X Q. 48. You were dealing with Johnson all the time, were you not?

Ans. Yes, sir.

X Q. 49. And this property was really sold to Johnson, wasn't it? That was the real truth of the transaction?

Ans. Yes, sir.

284 X Q. 50. Johnson put the property in the name of his mother-in-law, Mrs. Wheeler?

Ans. That is my understanding; yes, sir.

X Q. 51. And when you got this $2,000 you thought you were get-

ting the means out of that credit given to you, to pay your debts, didn't you?

Ans. It might not have been that much. Mr. Johnson and I had other transactions, which might have made it up. We had had no settlement.

X Q. 52. In all this you expected this $2,000 to go to liquidate what was due to you for the balance on that house, and if there was more than enough you would make it up?

Ans. Yes, sir.

X Q. 53. Your dealings with Johnson were numerous, and had been for some time?

Ans. Yes, sir.

X Q. 54. So that all you did was to get this sum out of him, to enable you to raise money, and you thought you were getting it out of his house?

Ans. Yes, sir; that is what I stated that I believe.

X Q. 55. And that is true?

Ans. Yes, sir.

285 X Q. 56. And it was a fair transaction, so far as you were concerned; there was no fraud or any intention to cheat anybody?

Ans. In my dealings with the bank I told them that it was a second deed of trust.

X Q. 57. And they knew of the existing deed of trust to Wimer, held by General Myer?

Ans. Yes, sir.

X Q. 58. And it was a fair transaction, between you and the bank, and between you and Johnson?

Ans. Yes, sir.

X Q. 59. And if there was any fraud committed on Mrs. Wheeler by anybody it was not committed by you or by the Freedman's Bank, was it?

Ans. No, sir.

X Q. 60. What became of this building-association stock?

Ans. I did not see it delivered, but I was under the impression that it was given up to Mr. Gulick—at least I have so understood it.

X Q. 61. What became of the association itself, afterwards?

Ans. The association is still in existence.

286 X Q. 62. Is Johnson still secretary of it?

Ans. No, sir.

X Q. 63. Is Gulick treasurer?

Ans. No, sir.

X Q. 64. Well, there was some trouble about this business, wasn't there, with Johnson and Gulick?

Ans. Yes, sir; but not at that time.

X Q 65. No, but afterwards, after this date?

(Question objected to by Mr. Smith.)

Was there *there* some trouble afterwards?

Ans. Well, some years since.

X Q. 66. Well, it was subsequent to the date of this note of Mrs. Wheeler, wasn't it?

Ans. Yes, sir.

X Q. 67. Do you know anything about the present condition of this property—who holds it?

Ans. No, sir.

X Q. 68. Who is in possession of it?

Ans. I think W. T. Johnson is in possession of it.

X Q. 69. Do you know how he came to get possession of it?
Ans. Not positively.
X Q. 70. Well, what do you know about it, if anything?
Ans. Only hearsay.
X Q. 71. From whom did you hear what you know?
(Question objected to by Mr. Smith.)
287 X Q. 72. Mrs. Wheeler?
Ans. No, sir.
X Q. 73. Mr. McCormick?
Ans. No, sir; only outside parties—no parties interested. I have only heard rumors around about how he got possession.

WITNESS. I would like to make a statement in regard to the settlement of that Sherman note. I think it was after the collateral was left there; I do not think it was understood at the time they were left there that the note was settled, but after we failed in business, and when I surrendered up all my securities to the bank then Mrs. Sherman's note was released by that transaction—understood to be so.

Mr. TOTTEN. You mean to say that Stickney said he would release it if she went for it?

WITNESS. Yes, sir; and there is a little correction I would like to make in my former testimony in regard to the check issued by W. T. Johnson. It is mentioned two or three times there and creates a little confusion; it was a check from W. T. Johnson on the treasurer
288 of the building association. I wish also to state that I got the $3,000, alluded to on the Holtzclaw & Bruff note, and nothing on the collateral.

R. W. BRUFF.

Sworn to and subscribed before me this March 18, 1880.
B. G. LOVEJOY,
Examiner.

Adjourned to Friday, Feb. 18th, 1880, at 2 o'clock p. m.

WASHINGTON, D. C., *Friday, Feb.* 13, 1880.

At the request of Mr. Smith, examination postponed to Monday, Feb. 16, 1880, at one o'clock, p. m.

289 WASHINGTON, D. C., *Monday, February 16th*, 1880.

Met pursuant to adjournment.

Present, Messrs. Totten and Smith, of counsel, and Mr. Lovejoy, examiner.

RICHARD W. BRUFF recalled on behalf of defendant Mary J. Wheeler.

Examination by Mr. SMITH:

Mr. Bruff, I will read you a question and answer in cross-examination, and then put a question to you. (Reading from testimony:)

"And when you got this $2,000, you thought you were getting the means out of that credit given to you to pay your debts, didn't you?" Your answer to this question is, "It might not have been that much; Mr. Johnson and I had other transactions which might have made it up; we had no settlement."

Q. 1. Please state whether or not at the time you got this note and deed from Mr. Johnson you made any pledge or promise to him that you would protect that note and pay it at maturity.

290 Ans. I do not think that I agreed to pay the whole of it. I made some agreement with him that we would pay the note together—that I would help him out with it, and he would help me with it, but I thought I could secure the note though——

Q. 2. When you received that note and deed of trust, did you or not consider that, that was an accom'odation note?

(Question objected to by Mr. Totten, because leading and immaterial.)

Ans. Well, I must say that I did consider it an accom'odation note. I did notreally intend that Johnson should pay any of that $2,000; there were other transactions that I thought would reimburse me for that $2,000.

Q. 3. I understand you to say then that at the time of this transaction between you and Mr. Johnson as to that note and deed of trust you had had large dealings together and had had no settlement?

(Question objected to by Mr. Totten, because it is argumentative, and for the purpose of putting an answer in the mouth of the witness.)

Ans. Yes, sir; we had considerable transactions.

Q. 4. You state in your answer to the question I have already referred to that "it might not have been so much; Mr. Johnson and
291 I had other transactions which might have made it up." Now, what do you mean by that?

Ans. The purchasing of real estate several times that he called my attention to, and, in fact, to this piece of ground. I think he was the means of my purchasing it; I got it for about one-half its value—this ground that this house was built on, and Dr. Ford's also.

Q. 5. Now what do you mean by "Mr. Johnson and I had other transactions which might have made it up?" Do you mean by that to say that there might have been enough between you to settle this $2,000 note, beside considering it as a debt from Mr. Johnson?

(Question objected to by Mr. Totten, as slightly leading.)

Ans. Well, there probably would not have been as much as $2,000; he might have owed me something——

Q. 6. (Interposing.) But nothing like the $2,000. "There might not have been so much?"

Ans. Yes, sir. Our affairs were in an unsettled state, and, on
292 consideration, I do not think Mr. Johnson would have owed me anything like $2,000; there were some notes still outstanding. I have stated that I did not intend Mr. Johnson should pay the $2,000 note, but that I would protect it.

Q. 7. What did you say, just now, as to protecting Mr. Johnson in that note?

Ans. That I gave Mr. Johnson to understand that I would protect the note when it was given.

Q. 8. You were asked, "Was there anything due to you from anybody for the purchase money of that house?" You say, "Yes, I think there was something due." That is followed by the question, "How much?" You answer, "I think it was likely $2,000 due." Upon reflection, what do you say about that?

Ans. Well, I wish to correct that a little. This testimony I am giving now—I have been considering the matter, and I think that I was in error there.

Q. 9. Just state fully.

Ans. I think that the testimony I have given will explain that. I do not consider that Mr. Johnson owed me as much as that, and I stated that I agreed with him to protect the note.

293 Q. 10. With regard to the $2,000 Sherman note upon which the collaterals, consisting of the building association stock and the Connecticut River Railroad stock, are specified; did you give the said Sherman note and the said collaterals to the bank at the time the said Sherman note is dated, June 14th, 1872?

Ans. To the best of my recollection, yes, sir

Q. 11. Did you complete that transaction then, and receive the $2,000?

Ans. Yes, sir.

Q. 12. With regard to the $3,000 note of Holtzclaw & Bruff, upon which the collaterals, consisting of building-association stock, the check, and the Wheeler note, are specified; did you give to the bank the said $3,000 note and the said collaterals at the time the said $3,000 note is dated, July 13th, 1872?

Ans. Yes, sir.

Q. 13. Do you say that the $2,000 Sherman note, with its collaterals, and that $3,000 note, with its collaterals, were two respective and distinct transactions with the bank at these respective dates?

294 Ans. Yes, sir.

Q. 14. Did you have any conversation or understanding either with Mrs. Wheeler, Mr. Johnson, or Mr. McCormick relative to any subsequent use of the Wheeler note after you first left it with the bank?

Ans. No, sir.

Cross-examination by Mr. TOTTEN:

X Q. 1. Mr. Bruff, at what date did you sell this property to Mrs. Wheeler?

Ans. I cannot recollect the date.

X Q. 2. Well, it was along about July 1st, 1872, wasn't it?

Ans. Somewhere in that spring; it was not exactly at that time.

X Q. 3. How much did you get for it; what was the purchase-money?

(Question objected to by Mr. Smith.)

Ans. There wasn't any special bargain about the price. I agreed with Mr. Johnson that I should let him have it at cost—the cost of the ground and the cost of the house. We never had any final settlement about it.

295 X Q. 4. Cost of what?

Ans. Cost of the ground and the cost of the building on the ground. I bought the ground at a very reduced rate.

X Q. 5. You built the house yourself?

Ans. I built the house myself, and agreed with Mr. Johnson that he should not pay any more than the actual cost.

X Q. 6. With interest?

Ans. Yes, sir.

(Question and answer objected to by Mr. Smith.)

X Q. 7. Did he buy it subject to this mortgage or deed of trust held by Wimer?

Mr. SMITH. I object to the question, although the answer is not objected to, that Mrs. Wheeler bought it subject to this deed.

Ans. Yes, sir.

X Q. 8. And was conveyed to him in Mrs. Wheeler's name for the sake of convenience of dealing?

(Question objected to by Mr. Smith.)

Ans. I think he considered that he owed his mother-in-law this much money.

X Q. 9. What did he say about it?

Ans. It was my understanding that he owed his mother-in-law this much money.

296 X Q. 10. But the purchase was made by him?

Ans. Yes, sir.

X Q. 11. You had no dealings with Mrs. Wheeler?

Ans. No, sir. I think I stated that before.

X Q. 12. Was there an agreement on his part to take care of the Wheeler trust and pay it when it became due?

(Question objected to by Mr. Smith.)

Ans. I so understood it.

X Q. 13. Now, in speaking about this $2,000 note, you say that were transactions outstanding between you and Johnson out of which you expected this $2,000 note would be paid principally?

Ans. Yes, sir.

X Q. 14. What were those transactions?

Ans. I think I stated that he was the means of my buying this ground, which was bought at a very reduced value—about one-half of its value.

X Q. 15. How was the ground sold to you, and by whom?

Ans. By Mr. Develin.

X Q. 16. Who was he?

Ans. He was the agent for his mother, who owned the ground, formerly owned by Mrs. Develin.

X Q. 17. Was the property sold by Mr. Johnson in any way?

Ans. I think he was the means of my getting knowledge of it.

297 X Q. 18. How was he the means of it?

Ans. He was in the real estate business. I went to him and he stated that he would sell that ground at that price. I think forty cents a foot I paid for it, in that neighborhood, and afterwards it was considered to be worth eighty.

X Q. 19. How much paper was there outstanding which you gave for Johnson's accom'odation at the date of this note, this $2,000 note?

Ans. I do not know; there was one of $600, but I do not remember the amount of the other. There were two or three notes, one for $600, I remember, but the amount of the others I do not remember.

X Q. 20. Well, can't you give us a rough estimate of the amount outstanding?

Ans. Probably $1,000.

X Q. 21. No more than that?

Ans. No, sir.

X Q. 22. You think that is all?

Ans. Yes, sir.

X Q. 23. If he took up all the notes there would not have been anything due from him to you at all?

Ans. There were some improvements that he put in the house—he furnished the mantels and some of the gas-fixtures, and some of the plumbing—which would have taken off something.

297½ X Q. 24. That was for the original construction of the house?

Ans. Yes, sir.

X Q. 25. Then he had agreed to buy the house from you prior to the conveyance made by you to him?

Ans. Yes, sir; it was understood before I commenced the house that it was for him.

(Mr. Smith objects to all this line of testimony.)

X Q. 26. Have you ever had a settlement with Johnson since?

Ans. No, sir.

X Q. 27. Why not?

Ans. We failed in business, and things remain in an unsettled state.

X Q. 28. Well, did you go into the bankruptcy court and get discharged?

Ans. No, sir; we attempted it once or twice and gave it up.

X Q. 29. Well, how much is there due from Johnson now to you, if there were a settlement to-day?

Ans. That I cannot say.

X Q. 30. Well, there would have been $1,000 and interest for eight or ten years?

(Question objected to by Mr. Smith.)

Ans. I did not intend that Mr. Johnson should pay me anything on that $2,000 note. I fully intended to protect it.

X Q. 31. Why?

298 Ans. Because I considered that he had done me favors enough to counteract that. I was dealing pretty heavily in real estate and in the building-association stock; he would almost always throw any chances of purchasing stock in my way, and had been a great advantage to me in that way.

X Q. 32. Did you notify the Freedman's Bank when you gave this note to them that you would take care of it?

(Question objected to by Mr. Smith.)

Ans. No, sir.

X Q. 33. Mr. Bruff, you stated that you did not know what the purchase price was exactly, but that it was to be the cost to you?

Ans. Yes, sir.

X Q. 34. Well, now, how much of that purchase-money did Mr. Johnson ever pay to you aside from these accom'odations and accom'odation notes? Did he ever pay you anything in the way of purchase-money except what I have just mentioned?

Ans. Only in the way of these transactions that I spoke about—the favors that he had done for me; he had never paid me any money.

X Q. 35. And the mantels?

Ans. Yes, sir; I suppose the work he put in the house was worth $600 at least.

X Q. 36. That was all you got in consideration of the house?

Ans. Yes, sir.

299 X Q. 37. Mrs. Wheeler never paid you anything, did she?

(Mr. Smith objects to this line of questions.)

Ans. No, sir.

300 Upon reading over his testimony, the witness states as follows: On page 227, sixth line, my answer should read, "He purchased the mantles, all of the gas-fixtures, and most of the plumbing."

R. W. BRUFF.

Sworn to and subscribed before me the 18th day of March, 1880.

B. G. LOVEJOY,
Examiner.

301 WILLIAM T. JOHNSON, a witness of lawful age, produced and sworn on behalf of the defendant Mary J. Wheeler.

Examined by Mr. SMITH:

Q. 1. State your name and residence and business.

Ans. William T. Johnson; I am now living at No. 136 Penn. avenue, east; occupation, a lawyer.

Q. 2. Mr. Johnson, look at this deed of trust from Mrs. Wheeler to Mr. Ward (handing to witness Exhibit No. 7; see pp.), and see if you recognize it.

Ans. I do.

Q. 3. Have you examined the original $2,000 note upon which this deed is founded, now among the papers of the circuit court, in cause No. 16205?

Ans. Yes, sir; I believe I saw it there a short time ago.

Q. 4. I want you, if you please, to state distinctly and fully all the circumstances connected with the signing of these two papers, and state what disposition was made of them, and what persons were engaged in the transaction.

302 Ans. Upon the morning of the 5th day of July, 1872 (the date of this acknowledgement to the papers), Mr. Bruff called at my real-estate office, and stated to me that he was very much in need of $2,000 more than he then had at his command, in order to consummate some transaction which he had on hand. I offered to loan him my note for whatever he desired, as I had often done before; but he stated that the amount that he desired then was larger than he could use an endorsed note for, and he asked me if I thought Mrs. Wheeler would be willing to sign a note and deed of trust for that amount, and he could succeed better with that. I first hesitated, and stated that I would rather not ask her; but after he stated to me that he would look out for the payment of the note, and protect it, and being desirous to accom'odate him, I consented to ask her, and told him I thought she would if I asked her. I then turned to my clerk and asked him to prepare a note and deed of trust for $2,000 (giving him the neces-
303 sary data), and he did so. I at the same time took a blank deed of release, and suggested to Mr. Bruff that it would be well for him to sign that, as the beneficiary, so that, when he was through using that note, I could take the release with his signature to the trustee that we had designated and get it released. I did not take time to fill up the deed of release, as he was in a hurry; and taking the note and deed of trust and deed of release, I went to Mrs. Wheeler's house, and stated to her that Mr. Bruff desired an accom'odation of $2,000, but it was more than he could handle with my individual note, and he desired that she should sign a not' and deed of trust for that amount to help him out. She took the pen and signed it at my request, after which I returned to my office, and filled out the notarial certificate, placed my seal thereon as notary public, and handed the note and deed of trust to Mr. Bruff, and laid the deed of release away in my safe. I have no personal knowledge as to the use that he made of them other than what I have heard.

304 Q. 5. Let me inquire of you, at the time you laid the deed and note before Mrs. Wheeler, was there anything done as to the deed of release, or anything said about that, the deed of release that you say you prepared in blank?

Ans. I told Mrs. Wheeler that Mr. Bruff wanted an accom'odation, and that, at his request, I had had a note and deed of trust for $2,000

prepared, and that he had promised to protect it and look after its payment, and that I was taking a deed of release which he had already placed his signature upon, which would be for further protection.

Q. 6. Was that deed of release among the papers before Mrs. Wheeler at the time, or had she seen it before she signed either of the papers? Was it present among the papers?

Ans. I had them all in my hand together, the note and deed of trust and the release, and laid them down on the table together before her.

Q. 7. Are you distinct in your recollection or not, that he used the word "protection,", or any other word of that sort?

305 Ans. I am, for the reason that I was particular in my understanding with Mr. Bruff, and not until he stated that he would protect it did I consent to ask Mrs. Wheeler to sign them, and I so stated to her.

Q. 8. Did Mrs. Wheeler authorize you in words or not to deliver that deed to Mr. Bruff?

Ans. There was nothing said about it.

Q. 9. There was nothing said as to the delivery of that deed to any person?

Ans. No, sir; there was no such question asked and no such answer made.

Q. 10. Previously to the time that you presented the deed and note and deed of release to Mrs. Wheeler, had you ever had any conversation with her about the transaction or about the loan? I mean before you presented her the deed of trust and note, had you had any previous conversation with her touching that particular transaction?

Ans. No, sir; because it had never been spoken of prior to Mr. Bruff's coming into my office that morning.

306 Q. 11. Then I understand that the first that Mrs. Wheeler knew of this transaction was by the presentation of this deed of trust and note to her by you?

Ans. It was.

Q. 12. What relation did you occupy towards Mrs. Wheeler? I mean what family relation; whether you are connected with her in any way.

Ans. I am married to her only child.

Q. 13. Had Mrs. Wheeler been in the habit of confiding her business to you, and her confidence in matters of this sort up to that period?

Ans. She had not been having business to transact prior to this transaction.

Q. 14. Well, were you in any way her confidential adviser in matters of any importance?

Ans. There was nothing to advise her about that I am aware of.

Q. 15. Well, outside of business relations, did she have or not confidence in you that you would not mislead her?

(Question objected to by Mr. Totten, because it is one that Mr. Johnson cannot answer.)

Ans. I never knew anything to the contrary.

Q. 16. Can you say that in the ordinary transactions of life, outside of business, she did not have implicit confidence in you and your integrity?

307 Ans. She always did so far as I have ever seen, and I never knew anything to the contrary.

Q. 17. Mr. Johnson, I believe you were secretary of the Capitol Hill Building Association, and I take it for granted you know something about the value of that stock specified in the Sherman note, 40 shares.

WITNESS. Not the Sherman note.

Mr. SMITH. I mean the Holtzclaw and Bruff $3,000 note.

Ans. Yes, sir.

Q. 18. What was the value of that stock, the 40 shares of stock so specified at that time, and how do you know its value?

Ans. I can best ascertain that by referring to the constitution of that association (producing pamphlet). I have a copy of it here. The 13th article——

Mr. TOTTEN. I want the paper filed if it is to be relied upon.

(The pamphlet referred to is here offered in evidence, marked Exhibit No. 18, and hereto attached.) (See pp. .)

308 Q. 19. Just state the value of the stock and how you ascertained it.

Ans. The 13th article of the constitution reads as follows (reading):

"Each stockholder shall pay a monthly installment of one dollar per share on the first Tuesday of each month, commencing July 5th, 1870."

Consequently, in July, 1872, there would be 25 monthly payments of one dollar per share, which would be exactly $1,000 of cash paid into the treasury of the association. The stock at that time was selling from three to four dollars per share premium; the association itself was paying 10 per cent. premium on the stock, so that the value of that stock was between $1,100 and $1,200 at that time.

Q. 20. What was the standing of that building association to which you now refer at that time, and what was its standing at the time the stock was surrendered?

Ans. That association had been up to that time and was at that time in a flourishing condition, and so far as I have ever heard, has always been a solvent association.

309 Q. 20. What was the value of the check which you seem to have signed, and which accompanied that note at the time it passed into the bank—the $3,000 check heretofore spoken of.

Ans. By order of the board of directors——

(Mr. Totten objects to the witness stating the order of the board of directors. If they made an order, it was in writing, and it should be produced.)

Q. 21. Well, state the value of the check, if you can, Mr. Johnson, without referring to any order that they made. We do not want to go to the trouble of producing any papers. You were secretary. What was the value of that check?

Ans. The check called for the treasurer to pay to Mr. Bruff the sum of $3,000.

Mr. TOTTEN (interposing). That is not an answer to the question. The check will speak for itself.

Ans. (Continued.) And it was worth $3,000, and $3,000 was paid upon it by the treasurer.

Q. 22. (By Mr. SMITH.) Mr. Johnson, Mr. Bruff has stated that you purchased that property from him, and that it was put in the

310 name of Mrs. Wheeler. I wish you would state the entire facts connected with that transaction.

Ans. Well, I had in my possession something over $4,000, I believe, of Mrs. Wheeler's money, which she had no use for, and which she desired me, whenever it suited, to return to her in the shape of a home, as I was in the real-estate business, and which I promised to do; and when this particular piece of ground upon which the house and the adjoining one stand, was placed in my hands for sale as real-estate agent, I immediately informed Mr. Bruff thereof, because he was constantly looking around for bargains, and it was offered at a very low price for

cash. I was the agent through whom it was sold to Mr. Bruff, and I made with Mr. Bruff a bargain at the time of the sale that the ground for this pair of houses was not to be sold out to other parties, but that we should have built there two houses together, one of which was to be deeded to Mrs. Wheeler in accordance with my original intention of furnishing a home for her out of her money, which I had in my
311 keeping, and which I stated to Mr. Bruff at that time. Therefore, when he was ready to make a deed the deed was prepared to Mrs. Wheeler. It was agreed between Mr. Bruff and myself, also, that he would put up the building as far as the walls, and certain other parts were concerned, with uniform fronts, and that I should complete it, and that he would charge only what the ground actually was sold to him for and what the improvements had actually cost him, and that he would get a loan for as large an amount as he could, as near his actual cost, and I would make up the balance to him, when we would have a final settlement of our numerous accounts.

Q. 23. Well, whatever money went into that house, I understand from you was money that you had in your hands belonging to Mrs. Wheeler?

Ans. Yes, sir.

Q. 24. It has been stated that you furnished certain parts of the fitting up as to mantels, &c. State fully what amount of your
312 personal means was contributed towards the furnishing-up of that house in all.

Ans. I cannot state now, but it was between $1,000 and $2,000. I did all the painting and graining, putting in the electric bells, furnishing the Latrobes, ranges, and mantels, all the heating apparatus, over $300 worth of plumbing, and considerable other portions. The exact amount I do not know at the present time.

Q. 25. I understand you to state that Mr. Bruff was informed of the fact that it was Mrs. Wheeler's money that you were putting into that house?

Ans. Yes, sir.

(Question and answer objected to by Mr. Totten as immaterial.)

Q. 26. State how distinct you are in your recollection as to Mr. Bruff's statement to you that he would protect that note before you consented to apply to Mrs. Wheeler for the accommodation.

(Question objected to by Mr. Totten, because it is improper, suggestive.)

313 Ans. I stated to him in answer to his request, that I would not like her to encumber the property, as that was not in accordance with our previous arrangement, and he said that he needed that amount to accomplish the financial affairs that he had on hand at the time, and he would protect it and see that it was paid, and that she should not be worried about it at all, and when I found afterwards that it was involved in his affairs with the bank, I censured him about it.

(All the above answer objected to by Mr. Totten.)

Ans. (Continued.) And reminded him of his agreement, and he said——

(Mr. Totten objects to the witness reciting any of the statements of Mr. Bruff, and also objects to their being recorded.)

Q. 27. Well, Mr. Johnson, you need not state what he said. I want you to state legal evidence, and nothing else. Is it very distinct
314 in your recollection that the statements were made in reference to that agreement to protect the note? Is that very distinct in your recollection now; could you be mistaken in it?

(Question objected to by Mr. Totten, because it is a repetition of previous questions, and because it is suggestive.)

A. I am positive of it, because I requested at that time that he should sign a deed of release, as the beneficiaries intending, if we had had time then, to have completed the preparation of it.

Q. In your opinion of the affairs as then existed between you and Mr. Bruff, what amount of money did you owe him at that time?

A. It would be impossible to approximate as to the amount; he had not yet furnished me a statement of the cost of the work which he had done upon the building, and we were constantly borrowing notes from each other, from $300 up to as high as $800. Sometimes he would borrow of me and sometimes I would of him, which we would
315 use upon the market, and unfortunately some of them are outstanding now.

Q. Was Mr. Bruff at that time considered a man in very prosperous business condition, or not?

A. He was; and I had no difficulty in passing a $500 or $600 note of his to any bank or broker negotiating notes.

Q. Well, about that time were you yourself in rather a prosperous condition in business?

A. I was; and he could do the same with my note.

Q. If you have the knowledge, state about how long it was after this transaction between you and Mr. Bruff that he fell into embarrassments and failed?

A. It was in the latter part of the fall of the same year. I am not positive, but I think it was the same fall (after a pause). I will make that positive; it was the same fall—the autumn of the same year.

316 Cross-examination by Mr. TOTTEN:

Q. Is Mrs. Wheeler a widow?

A. Yes, sir.

Q. Was she in July, 1872?

A. She was.

Q. Does she live with you now?

A. No, sir; I live with her.

Q. How is that; does she keep house?

A. She does.

Q. And you live with her?

A. Yes, sir.

Q. How was it in 1872; did she live with you, or you with her?

The WITNESS. 1872?

Mr. TOTTEN. Yes, sir; in July, 1872?

A. She was living with me.

Q. How long is it since you surrendered the business of keeping house?

A. She took possession of this house on the 17th March last.
317 I remained at my former residence about a month and a half after that, until about the first or second of May, when I went up to live with her.

Q. Is she engaged in any business; if so, what?

A. None, except keeping house.

Q. Does she keep boarders?

A. She has one member of Congress and his wife, and another gentleman and his wife, living with her.

Q. And you and your wife?

A. I mean those outside of my own family.

Q. Of what does your family consist?
A. My wife and three children.
A. Who furnished this house?
Mr. SMITH. At what time, colonel?
Mr. TOTTEN. When Mr'. Wheeler moved into it?
A. When she went into the house she took her own furniture, and a month and a half afterwards, when I went there I took my own furniture with me.

318 Q. Where did she live at the time she took possession of this house?
A. She was living at 104 3rd st., northwest?
Q. Was that with you?
A. Yes, sir.
Q. How long had she been living with you, prior to March, to the date when she took possession of this house?
A. She lived with me up to the 17th March, last; then she left me, and I went there about the 1st or 2nd of May after that.
Q. How long prior to March had she been living with you?
A. We lived together all the time.
Q. Since your marriage?
A. Yes, sir.
Q. When were you married?
A. About 14 or 15 years ago.
Q. Where?
A. In Washington.

319 Q. Are you a native of Washington?
A. No, sir.
Q. Of where?
A. I was born in Central New York State, and came here from Pennsylvania.
Q. Does Mrs. Wheeler furnish the means to run this house of yours, or of hers rather, I mean, of the Commissioners of the Freedman's Bank. Somebody pays the expense of running the house, servant hire, and the table, and the like of that; who does that?
A. She does.
Q. Do you pay your board regularly for yourself and children, yourself and wife?
A. As regularly as I can.
Q. You agree to pay it at all events?
A. I pay some, as I am able.
Q. Do you know anything about the method by which Mrs. Wheeler got possession of this house?
A. I do not. I was not there, and had nothing to do with it.

320 Q. Who made the arrangement by which she got possession of it; do you know that?
A. I only know what I have been told.
Q. Well, have you been told anything by Mrs. Wheeler or McCormick?
A. No, sir. I received my information from my wife, who came to me, if you want to know that.
Mr. SMITH. No; I object to it.
Mr. TOTTEN. And I do not care much about it.
A. I had no part in that.
Q. Were you advised with by anybody about it?
A. No, sir; she made up her mind to do something in the matter, and

I understood that she conferred with McCormick. They made their own arrangements.

Q. You were not advised with about it?

A. No, sir.

Q. By neither Mrs. Wheeler nor by McCormick?

A. No, sir; and I did not advise her at all in the matter.

321 Q. Were you advised with about Mrs. Wheeler's answer to the original bill in this cause?

A. I was not, and never saw it until I heard it read after it was all prepared.

Q. Who read it to you?

A. It was brought to my office: I was requested to ask her to come to my office so that she could go to city-hall and make affidavit to it. On the following day, by agreement, she came to my office and I heard her counsel read it over to her; that is the first time that I had ever seen it.

Q. When did you first see the cross-bill of Mrs. Wheeler?

A. O, I thought that was what you were talking about.

Q. No; I have been asking you about the answer; she filed her answer first, and subsequently filed a cross-bill. I have been asking you up to this time when you first saw her answer?

A. I will state that the answer to the last question may have
322 been her answer or her cross-bill. I will not be positive.

Q. Did you ever see the cross-bill (after a pause). Well, you do not know whether it was the answer or the cross-bill you saw?

A. No, sir; I do not.

Q. Do you know whether you saw two papers of that kind?

A. I do not know that I ever read either one of them, but I remember hearing one of them read in my office to Mrs. Wheeler.

Q. She charges you very pointedly in this cross-bill with having perpetrated a fraud upon her; did you do it?

A. I would like to hear that portion read which refers to it as I am not familiar with the language of it.

Q. Now, in speaking of this $2,000 note and deed of trust she says (reading): "and she charges that the said note and said deed of trust were obtained from her fraudulently in manner and under the circumstances as follows: She avers that about the time the said note
322½ bears date, W. T. Johnson, her son-in-law, requested her to sign the note, stating to her that he wished to accommodate Mr. Bruff, etc." She says that the whole matter was arranged at the request aforesaid of the said Johnson; she states further that she was not in need of money at that time and that she would not have endangered her property upon a loan at legal or usurious interest, "if she had not been deceived and overreached in the manner hereinafter stated." Have you never read this cross-bill?

A. I never have.

(Cross-bill of Mrs. Wheeler handed to the witness for examination.)

Q. (Repeated.) She charges you very pointedly in this cross-bill with having perpetrated a fraud upon her; did you do it?

A. The transaction that occurred between Mrs. Wheeler and myself relative to the signing of the note and deed of trust, I have already related. There was no intention on my part that there should be any fraud, but that Mr. Bruff should be accommodated as I requested.

323 (Question and answer objected to by Mr. Smith.)

A. (Continued.) In fact very few words were stated for Mr.

Bruff was waiting and I was in a hurry, and she signed the papers and I walked away with them.

Q. You had no doubt in your mind at that time that it would be all right; you and Mr. Bruff are both perfectly able to take care of $2,000 at any time?

(Question objected to by Mr. Smith.)

A. I considered at that time that it was a fair transaction because I was willing to loan Mr. Bruff $2,000, knowing that he was perfectly solvent at that time, and I loaned him money and notes whenever asked for any amount that he desired.

Mr. SMITH. Previously you mean?

A. Previous to that time.

By Mr. TOTTEN:

Q. Well the fact that this matter failed to come out as you
324 gentleman anticipated was owing to the misfortunes of Mr. Bruff and perhaps of yourself?

(Question objected to by Mr. Smith.)

A. Certainly; if Mr. Bruff had continued to remain solvent as he then was, I have no doubt but that he would have paid that note, as he promised he would do it.

Q. You say that check was worth $3,000, and *and* that $3,000 was paid on it; who paid $3,000 on it?

A. The treasurer, to whom it was made payable.

Q. You mean upon whom it was drawn?

A. Yes, sir; on whom it was drawn, I mean.

Q. To whom did he pay the money?

The WITNESS. Do you want to know by that, what evidence I have of the payment of it?

Mr. TOTTEN. I want to know if you know who got the money.

A. I did not see the money paid.

Q. Well, how do you know it was paid then?

A. Because the treasurer of the association returned that with
325 the other checks which were drawn upon him to offset the cash of the association which had been placed in his hands.

Q. Do you know where the money went to that was paid on that check by the treasurer?

A. Nothing further than that the check was returned with the other vouchers as paid.

Q. Did the association owe Bruff $3,000, when you drew that check in his favor?

A. They did.

Q. Then the check was properly drawn?

A. It was.

Q. And it properly belonged to Bruff?

A. It was Bruff's check, and was good for $3,000, for the treasurer had received the money.

Q. You stated that you intended to complete that release if you had had time; in what way would you have completed it?

326 A. By inserting therein everything that was necessary to make it complete for the signature of the trustee.

Q. You do not mean by that, that you intended to have the trustee sign it?

A. Everything but that, so as to be ready for his signature whenever Mr. Bruff should tell me that he had paid it, so that I could go to the trustee and have it released.

Q. Did you tell Mrs. Wheeler that that deed of release would protect her against loss and injury in consequence of that deed of trust and note?

A. I told Mrs. Wheeler that this was an accommodation to Mr. Bruff and that he had promised to protect it, and that I had a deed of release with his signature which I would complete, and which would enable us to get the trustee to release it whenever he was through using it and had paid it.

Mr. TOTTEN. That is all.

WM. T. JOHNSON.

327 Sworn to and subscribed before me this 5th day of April, 1880.

B. G. LOVEJOY,
Examiner in Chancery.

Mr. SMITH. I close with Mr. Johnson, and I am not sure that we will want any more time.

Adjourned until further notice.

In the supreme court of the District of Columbia.

McCORMICK *vs.* CRESSWELL ET AL. } Eq. 6690.

DISTRICT OF COLUMBIA,
County of Washington, ss:

I, B. G. Lovejoy, examiner in chancery, do hereby certify that the foregoing depositions in behalf of the defendant Wheeler, were taken down and by me reduced to writing at the office of Enoch Totten, esq., 6th street, Washington, D. C., in the presence of the respective solicitors, from the statement of the witnesses who were by me sworn
328 to tell the truth, the whole truth, and nothing but the truth; and the said witnesses signed their respective depositions after having read or having had read the same; and I further certify, that I am not of counsel or in any wise interested in said cause.

B. G. LOVEJOY,
Examiner in Chancery.

329 "EXHIBIT No. 1.

"$3,000.] No. 1129. [Folio 8813.

"WASHINGTON, D. C., *July* 13, 1872.

"Thirty days after date we promise to pay to the order of the Freedman's Savings and Trust Company three thousand dollars, without defalcation, for value received, with interest at the rate of 10 per cent. per annum, payable semi-annually.

"As collateral security I deposit with said company, and hereby authorize them to sell, at public or private sale, without notice, upon the non-payment of this obligation at maturity, the following-described 40 shares Capitol Hill Building Asso. stock; check, W. T. Johnson, sec't'y, for $3,000, $1,000 paid; due Aug't 7, 1872, R. E. note, Mary J. Wheeler, for $2,000.

"(Signed) "HOLTZCLAW & BRUFF."

330 "EXHIBIT No. 2.

"$2,000.] No. 1104. [Folio 83 B.

"WASHINGTON, D. C., *June* 14, 1872.

"Thirty days after date I promise to pay to the order of Holtzclaw & Bruff, at the banking-house of the Freedman's Savings and Trust Company, two thousand dollars, without defalcation, for value received, with interest at the rate of 10 per cent. per annum, payable semi-annually.

"As collateral security deposit with , and hereby authorize to sell, at public or private sale, without notice, upon the non-payment of this obligation at maturity, the following-described 22 shares East Capitol Building Ass. No. 161, 3 shares Co-operative Building, 4 shares stock Conn. River R. R. Co., No. 3173.

"(Signed) "CAROLINE A. SHERMAN."

331 "EXHIBIT No. 3.

"Deed of trust.—Richard W. Bruff et al. to J. B. Wimer. [1.75.

"Received for record, 1.45 p. m., on the 7th day of October, A. D. 1871, and recorded in liber No. 662, folio 59, one of the land records for Washington County, in the District of Columbia, and examined by

"S. WOLF, *Recorder*."

332 EXHIBIT No. 3.

"This indenture, made this third day of October, in the year of our Lord one thousand eight hundred and seventy-one, between Richard W. Bruff, and Jane C. Bruff, his wife, of the city of Washington, District of Columbia, of the first part, and J. B. Wimer, of the city, District aforesaid.

"Whereas the said Richard W. Bruff is justly indebted unto Albert J. Myer in the just and full sum of five thousand dollars, for which sum he has given his promissory note, dated even date with these presents, and payable in five years from date, with interest at ten per cent., interest payable semi-annually; and whereas the said parties being desirous to secure the prompt payment of said note, with all interests, costs, and charges that may accrue thereon, have agreed to execute these presents:

"Now, therefore, this indenture witnesseth, that the said parties of the first part, for and in consideration of the premises aforesaid, and further, the sum of one dollar, in lawful money of the United
333 States to them in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeffed, released, and conveyed, and do by these presents grant, bargain, sell, alien, enfœff, release, and convey unto the said party of the second part, all that certain piece and parcel of ground, lying and being in the city and District aforesaid, and known as and being part of lot numbered one, in square numbered seven hundred and thirty and described as follows: Beginning for the same at the southwest corner of said lot one, and running thence eastwardly along the line of Penn. ave. twenty-three feet one inch; thence northeastwardly on a line parallel with the west line of said lot, forty-five (45)

feet; thence northwardly to the rear line of said lot at a point twenty-two (22) feet from the northwest corner of said lot; thence west twenty-two (22) feet to the northwest corner of said lot; thence southwestwardly to the place of beginning.

"Together with all the improvements, ways, easements, rights,
334 privileges, and appurtenances to the same belonging or in anywise appertaining, and all the estate, right, title, interest, and claim, whatsoever, whether at law or in equity, of the said parties of the first part, of, in, to, or out of the said piece or parcel of land and premises.

"To have and to hold the said piece or parcel of land and premises with the appurtenances unto and to the use of the said party of the second part.

"In and upon the trusts, nevertheless, hereinafter mentioned and declared, that is, in trust, to permit the said parties of the first part, their heirs or assigns to use and occupy the said described premises, and the rents, issues, and profits thereof; to take, have, and apply to and for their sole use and benefit, until default be made in the payment of said note, or semi-annual interest or insurance on said premises, or any proper cost, charge, commission, half commission, or expense in and about the same.

"And upon the full payment of all of said note, and the interest thereon, and all other proper costs, charges, commissions, half-commis-
335 sions, and expenses at any time before the sale hereinafter provided for, to release and reconvey the said described premises unto the said parties of the first part, their heirs, or assigns at their cost.

"And upon this further trust, that upon default being made in the payment of the said note, or any proper cost, charge, commission, half-commission, or expense, in and about the same, then, and at any time thereafter, to sell the said piece or parcel of land and premises at public auction, upon such terms and conditions, and at such time and place, and after such previous public advertisement, as the said party of the second part, or the trustee acting in the execution of this trust, shall deem advantageous and proper; and to convey the same in fee simple to the purchaser or purchasers thereof, at his, her, or their cost and expense, and without any liability to see the application of the purchase-money, and the proceeds of said sale or sales, first to pay all proper costs, charges and expenses, and to retain as compensation, a commission of three per cent. on the amount of the said sale or sales;
336 secondly, to pay whatever may then remain unpaid of the said note and the interest thereon to the time of such sale, whether the same shall be due or not; and lastly to pay the remainder, if any, to said parties of the first part, their heirs or assigns.

"In testimony whereof, the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

"RICHARD W. BRUFF. [L. S.]
"JANE C. BRUFF. [L. S.]

"Signed, sealed and delivered in presence of (having first been duly stamped)—

W. T. JOHNSON.

"DISTRICT OF COLUMBIA,
"*County of Washington, ss:*

"I, William T. Johnson, a notary public, in and for the county afore-

said, do hereby certify that Richard W. Bruff, and Jane C. Bruff, parties to a certain deed bearing date on the third day of October, A. D. 1871, and hereto annexed, personally appeared before me,
337 in the county aforesaid, the said Richard W. Bruff, and Jane C. Bruff, being personally well-known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Jane C. Bruff, being by me examined privitely and apart from her husband, and having the deed aforesaid fully explained to her, acknowleded the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

"Given under my hand and notarial seal, this third day of October, A. D. 1871.

"[NOTARIAL SEAL.] "W. T. JOHNSON,
"*Notary Public.*"

338 EXHIBIT No. 4.

"OFFICE FOR COMMISSIONERS OF THE
"FREEDMAN'S SAVINGS AND TRUST COMRANY,
"*Washington, D. C., March 6th*, 1876.

"WM. H. WARD, Esq., trustee, 313 4½ street,
"*Washington, D. C.*

"SIR: Default having been made in the payment of the of Mary J. Wheeler for $2,000, dated July 1, '72, and payable in one year from its date to the order of R. W. Bruff, with interest at ten per centum per annum, you are hereby requested to *sell and* advertise and sell the following described property, deeded to you July 1, '72, to secure the payment of said note, viz, part of lot one, in square seven hundred and thirty (730), in Washington City, D. C., viz: Beginning for the same on Pennsylvania avenue, on the south side of lot one, at a point 23 feet from the southwest corner of said lot; thence westwardly on said avenue 23 feet, to the southwest corner of said lot; thence northeastwardly on the line of said lot 73 feet 1 inch to the northwest
339 corner of said lot one; thence eastwardly on the north line of said lot 23 feet; thence southwestwardly to a point 48 feet from the line of Pennsylvania avenue, and 23 feet from the west line of said lot one; thence 48 feet to the place of beginning.

"We are not in possession of the deed of trust itself, but from the enclosed abstract of title, which we will thank you to return, it appears that it is recorded in liber 685, folio 359.

"The part of lot four which this deed of trust includes has been sold under a prior trust, as shown by the abstract.

"The property should be advertised and sold subject to the prior trust to J. B. Wimer, mentioned in the abstract, for $5,000, and interest at ten per cent. from October 3, '71, less $1,475 paid.

"Mr. Michael McCormick holds the equitable interest in the property.

"Please send us copy of the advertisement.

"Respectfully,

"R. H. T. LEIPOLD,
"*Of the Com'rs.*"

340 "WASHINGTON, D. C., *M'ch* 6, '76.

"Mr. LEYPOLD:

"Below please find mem. of present status of a/c of Gen'l Myer with R. W. Bruff, as requested by you.

"I give it to April 3, '76, the date at which interest is next due.
"1871.
"Oct. 3. To cash on promissory note secured by deed of trust . . . $5,000
" " 4. " cash paid insurance 15

"$5,015 00

"Total amount of cash received on a/c of interest to this date $1,475.
"Interest @ 10 % per annum.
"Very respectfully,

"J. B. WIMER,
"*Trustee.*"

341 EXHIBIT No. 5.

Advertisement of sale.

B. H. Warner, corner 7th and F streets.

Trustee's sale of valuable real estate on Pennsylvania , east of the Capitol.

By virtue of a deed of trust, dated July 1st, A. D. 1872, and duly recorded in liber No. 685, folio 359, &c., of the land records for Washington County, D. C., and by written direction of the party secured thereby, I will sell, at public auction, on Friday, the 17th day of March, A. D. 1876, at 5 o'clock, p. m., in front of the premises, the following described real estate in the city of Washington, D. C., being the western part of lot numbered one (1), in square numbered seven hundred and thirty (730), and being described as follows: Beginning at a point on Pennsylvania ave. 23 feet eastwardly from the southwestern corner of said lot, and thence westwardly to said southwestern corner; thence northeastwardly along the western line of said lot 73 feet one *one* (1) inch to the northwestern corner of said lot; thence east along
342 the northern line of said lot 22 feet; thence southwestwardly to a point in said lot 23 feet from said western line, and 48 feet from the point of beginning, and thence to the said avenue and point of beginning, together with all the improvements thereon.

This property will be sold subject to a prior deed of trust, a statement of which will be exhibited at the sale.

Terms of sale: One-half in cash, of which $50 must be paid at sale; the deferred payments to be made in six and twelve months from day of sale, with interest at the rate of ten per cent. per annum, and secured by deed of trust and insurance to the satisfaction of the trustee. Terms to be fully complied with within six days after day of sale; otherwise the trustee reserves the right to resell the property after one week's public notice, at the risk and cost of first purchaser. All conveyancing at purchaser's cost.

WM. H. WARD, *Trustee.*
J. T. COLDWELL, *Salesman.*

343 EXHIBIT No. 6.

"Trustee's deed.—Wm. H. Ward, trustee, to John A. J. Creswell, Robert Purvis, & Rob't H. T. Leipold, com'rs F. S. & T. Co.

"12.20 p.

"Received for record on the 24 day of March, A. D. 1876, and re-

corded in liber No. 814, folio 311, one of the land records for the District of Columbia, and examined by

"S. WOLF, *Recorder*."

344 This indenture, made this twenty-first day of March, in the year of our Lord one thousand eight hundred and seventy-six, between Wm. H Ward, trustee, of the city of Washington, in the District of Columbia, of the first part, and Jno. A. J. Creswell, Robert Purvis, and Robert H. T. Leipold, commissioners of the Freedman's Savings and Trust Company, duly appointed and qualified in pursuance of an act of Congress entitled "An act amending the charter of the Freedman's Savings and Trust Company, and for other purposes," approved June 20th, A. D. 1874, of the second part, witnesseth:

That whereas, by deed, dated July 1st, A. D. 1872, Mary J. Wheeler, of the said city and District, did grant and convey to the party of the first part certain real estate in the city of Washington, District of Columbia, in trust to secure the payment of a certain debt, and with power and authority, in case of default in the payment of said debt or the interest thereon, to sell said real estate at public auction; all of which will appear from said deed, duly recorded in liber No. 685, folio 369, one of the land records of said District, and said Mary J. Wheeler having made default in the payment of said debt, and the legal holder
345 of the note for said indebtedness having requested a sale of said real estate, and the said party of the first part, as trustee, having, after previous advertisement of the time, manner, place, and terms of sale, as provided for in said deed of trust, exposed said real estate herein conveyed on the seventeenth day of March, A. D. 1876, at public auction, at which said sale said parties of the second part being the highest bidder for said herein conveyed real estate, became the purchaser thereof, at and for the sum of fourteen hundred ($1,400.00) dollars, which said amount hath been by them fully paid and satisfied to the said party of the first part, and the said parties of the second part are entitled to a conveyance of said premises:

Now, therefore, this indenture witnesseth that said part' of the first part, for and in consideration of the premises aforesaid, and further the sum of five ($5.00) dollars, in lawful money of the United States, to him in hand paid by the said parties of the second part, at and before the sealing and delivering of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, conveyed, and confirmed, and by these presents doth grant, bargain, sell, convey, and con-
346 firm unto the said parties of the second part, their heirs, and assigns, forever, subject, however, to a prior deed of trust made by Rich'd W. Bruff et ux. to J. B. Wimer, trustee, to secure the payment of a debt of $5,000, said deed bearing date October 3rd, A. D. 1871, and being recorded in liber 662, folio 59, one of the land records of the District of Columbia, all that certain piece or parcel of ground situate, lying, and being in the city of Washington, District of Columbia, being the western part of lot numbered one (1), in square numbered seven hundred and thirty (730), beginning for the same on Pennsylvania avenue, on the south side of lot one (1), at a point twenty-three (23) feet from the southwest corner of said lot; thence westwardly on said avenue twenty-three (23) feet to the southwest corner of said lot; thence northeastwardly on the line of said lot seventy-three feet one inch (73 ft. 1 in.) to the northwest corner of said lot; thence eastwardly on the north line of said lot twenty-two (22) feet; thence southwestwardly to a point forty eight (48) feet from the line of Pennsylvania avenue, and

twenty-three (23) feet from the west line of said lot one; thence forty-eight (48) feet to the point of beginning; together with all the improvements, ways, easements, rights, privileges, appurtenances, and
347 hereditaments to the same belonging, or in any wise appertaining, and all the estate, right, title, interest, and claim whatsoever, either at law or in equity, of the said party of the first part of, in, and to the said piece or parcel of land and premises. To have and to hold the said piece or parcel of land and premises, with the appurtenances, unto and to the use of the said parties of the second part, their heirs and assigns, forever.

In testimony whereof the said party of the first part, as trustee as aforesaid, hath hereunto set his hand and seal on the day and year first hereinbefore written.

WM. H. WARD, *Trustee.* [SEAL.]

Signed, sealed, and delivered in the presence of—
ROB'T H. WARD.

DISTRICT OF COLUMBIA,
County of Washington, ss:

I, Robert H. Ward, a notary public in and for the county aforesaid, do hereby certify that William H. Ward, party to a certain deed bearing date on the twenty-first day of March, A. D. 1876, and hereunto annexed, personally appeared before me, in the county aforesaid, the said William W. Ward, being personally known to me to be the per-
348 son who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this twenty-first day of March, A. D. 1876.

[NOTARIAL SEAL.] ROBERT H. WARD,
Notary Public.

349 EXHIBIT No. 7.

[1.75.

"Deed of trust.—Mary J. Wheeler to Wm. H. Ward.

"Received for record on the 9 day of July, A. D. 1872, and recorded in liber. No. 685, folio 359, one of the land records for county in the District of Columbia, and examined by

"S. WOLF, *Register.*"

350 "This indenture, made this first day of July, in the year of our Lord one thousand eight hundred and seventy-two, between Mary J. Wheeler, of the city of Washington, District of Columbia, of the first part, and William H. Ward of the same place, of the second part.

"Whereas, the said Mary J. Wheeler is justly indebted unto R. W. Bruff, in the just and full sum of two thousand dollars, for which sum she has given her promissory note of even date with these presents, and payable (with interest at the rate of ten per cent. per annum) one year after date; and whereas the said Mary J. Wheeler, being desirous of securing the prompt payment of said note with all interest, costs, and charges that may accrue thereon, has agreed to execute these presents:

"Now therefore this indenture witnesseth, that the said party of the first part, for and in consideration of the premises aforesaid, and further, the sum of one dollar, in lawful money of the United States, to her in hand paid by the said party of the second part, at and be-
351 fore the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release, and convey unto the said party of the second part, all that certain piece or parcel of ground lying and being in the city & District aforesaid, and known as & being parts of lots numbered one and four (1 & 4) in square numbered seven hundred & thirty (730): Beginning for the same on Penn. ave., on the south line of lot one, at a point twenty-three (23) feet from the southwest corner of said lot one, and running thence westwardly along Penn. ave. twenty-three (23) feet to the southwest corner of said lot one; thence northeastwardly along the west line of said lot one seventy-three (73) feet one inch, to the northwest corner of said lot one; thence north along the west line of lot four twenty feet; thence east twenty-seven feet; thence southwestwardly to a point forty-eight feet from Penn. avenue, and twenty-three feet from the west line of lot one; thence forty-eight to the place of beginning.

"Together with all the improvements, ways, easements,
352 rights, privileges, and appurtenances to the same belonging or in any wise appertaining, and all the estate, right, title, interest, and claim whatsoever, whether at law or in equity of the said party of the first part, of, in, to, or out of the said piece or parcel of land and premises.

"To have and to hold the said piece or parcel of land and premises with the appurtenances, unto and to the use of the said party of the second part, his heirs and assigns.

"In and upon the trusts, nevertheless, hereinafter mentioned and declared; that is, in trust, to permit the said Mary J. Wheeler, her heirs or assigns to use and occupy the said described premises, and the rents, issues, and profits thereof; to take, have, and apply to and for her & their sole use and benefit until default be made in the payment of said note, or any insurance, or any proper cost, charge, commission, half-commission, or expense in and about the same.

"And upon the full payment of all of said note and the interest thereon, and all others proper costs, charges, commissions, half-commissions, and expenses at any time before the sale hereinafter
353 provided for, to release and reconvey the said described premises unto the said Mary J. Wheeler, her heirs or assigns at her & their cost.

"And upon this further trust, that upon default being made in the payment of the said note, or any portion of the interest, or any proper cost, charge, commission, half-commission, or expense in and about the same, then and at any time thereafter, to sell the said piece or parcel of land and premises at public auction upon such terms and conditions, and at such time and place, and after such previous public advertisement as the said party of the second part, or the trustee acting in the execution of this trust shall deem advantageous and proper; and to convey the same in fee simple to the purchaser or purchasers thereof, at his, her, or their cost and expense, and without any liability to see to the application of the purchase money; and of the proceeds of said sale or sales, first, to pay all proper costs, charges, and expenses, and to retain as compensation a commission of three per cent. on the amount

of the said sale or sales; secondly, to pay whatever may then
354 remain unpaid of the said note, and the interest thereon to the time of such sale, whether the same shall be due or not; and lastly, to pay the remainder, if any, to said Mary J. Wheeler, her heirs or assigns.

"In testimony whereof the said party of the first part has hereunto set her hand and seal on the day and year first hereinbefore written.

"MARY J. WHEELER. [SEAL.]

"Signed, sealed, and delivered in the presence of (having first been duly stamped)—

"W. T. JOHNSON.

"DISTRICT OF COLUMBIA,

County of Washington, ss:

"I, William T. Johnson, a notary public in and for the county aforesaid, do hereby certify that Mary J. Wheeler, party to a certain deed bearing date on the first day of July, A. D. 1872, and hereto annexed, personally appeared before me, in the county aforesaid, the said Mary J. Wheeler being personally well known to me to be the person who executed the said deed and acknowledged the same to be *their* act and deed.

"Given under my hand and notarial seal this fifth day of July, A. D. 1872.

[NOTARIAL SEAL.] "W. T. JOHNSON,

"*Notary Public.*"

355 EXHIBIT No. 8.

Abstract of title of parts of lots numbered one (1) and two (2) in square numbered seven hundred and thirty (730), Washington City, District of Columbia, and south 20 feet of lot four (4), in said square, city, and District aforesaid.

Certificate to James Greenleaf for square numbered 730, with other lots and squares, July 10th, 1794. (Liber B, fol. 44.)

James Greenleaf to Peter Godfrey Rutger, Jan Schimmelfenwick, and R. Dan'l Commelin, of Amsterdam, U. Netherlands, July 28th, 1794; liber B, fol. 65; recorded Aug. 5th, 1794, convey square 730, with others.

Slyvannus Boune, vice-consul U. S. at Amsterdam, att'y of James Greenleal, to Gilles Greenweldt, Rudolph Meer, and Peter Vander, Wallen Van Zollenhoven, of Rotterdam, in U. Netherlands, July 29th, 1795; liber B, fol. 496, convey same as above, and recites that on the 26th day of June, 1795, at the city of Amsterdam, a reconveyance from Peter Godfrey Rutger, Jan Schimmelfenwick, et al. to James Greenleaf.

356 David A. Hall to John S. Develin, April 14th, 1836, liber W. B. 59, fol. 402; recorded July 18th, 1836, conveys lot numbered one (1) and two (2), in square numbered 730, and recites that David A. Hall was appointed on the 21st day of March, 1831, by authority, order, and decree of the circuit court of D. C., in case wherein James Greenleaf et al. vs. Gilles Greenweldt et al. are parties, as trustee to sell the lots in controversy.

Mary A. Develin to Richard W. Bruff, Feb. 28th, 1870; liber 607,

fol. 176; recorded Mar. 1st, 1870, conveys parts of lot one (1) and two (2), in square 730, to wit: Beginning for the same at a point on the line of Penn. ave. one hundred and twenty-one (121) ft. and six (6) inches from the southeast corner of said square, and running thence northeastly direction, at right-angles to said avenue, ninety-three (93) feet, to the south line of lot numbered four (4), in said square; thence due west to the southwest corner of said lot (4); thence due north seventy (70) feet, to the line of South A street; thence due west with said street forty one (41) feet; thence due south fifty-six (56) feet and six (6)
357 inches; thence in a southwesterly direction, at right angles to said Pa. ave., sixty-six (66) feet and three (3) inches and one-half (½), to the line of said ave; and thence with line of said ave. eighty-three (83) feet, to point of beginning.

John S. Develin, died, leaving Mary A., his wife, sole executor and devisee of all his lands. Will probated Nov. 18th, 1857.

Richard W. Bruff et ux. trust to Wm. A. Fenwick & W. T. Walker, trustees S. W. B. Ass'n, Feb. 28th, 1870, liber 607, fol. 167; recorded Mar. 1st, 1870, conveys same as above to secure payment of $2,000 to Harvey A. Clark, treasurer of said association; also lot 4, sq. 873.

Richard W. Bruff et ux. trust to Wm. A. Fenwick et al., trustees S. W. B. Ass'n, March 15th, 1870, liber 609, fol. 320; recorded Mar. 18th, 1870, conveys same as above to secure $1,000.

Richard W. Bruff et ux. to Wm. A. Fenwick et al., April 15th, 1870, liber 614, fol. 33, conveys same as above to secure $9,000.

358 Richard W. Bruff et ux. to Charles M. Ford, Oct. 14th, 1870, liber 626, fol. 403; rec'd Oct. 15th, 1870, conveys part of lot numbered two (2), in square 730, described as follows:

Beginning for the same at a point on the line of Penn'a avenue, distant 161 feet 6 inches from S. E. cor. of said square, and running thence in N. easterly direction at right-angles to said avenue 73 feet 1 inch, to the S. W. cor. of lot 4, in said square; thence due N. 70 feet, to the line of a street; thence due W. with said street 41 feet; thence due S. 56 feet and 6 inches; thence in a southwestwardly direction, at right-angles to said Penn. avenue, 66 feet and 3½ inches to the line of said avenue, and thence with the line of said avenue 43 feet to place of beginning.

Wm. A. Fenwick et al., trustees S. W. B. Ass'n release, to Richard W. Bruff, April 20th, 1871, liber 646, fol. 126, rec'd May 5th, 1871, recites trusts recorded in liber 607, fol. 167, liber 609, fol. 320, and 614, fol. 33, and conveys all of 1 & 2 in square 730, belonging to Bruff.

359 Richard W. Bruff et ux. trust to Thomas Hyde, May 15th, 1871, liber 646, f. 287, June 2d, 1871, to secure pay't of $4,000 to Emily L. Chapman, conveys parts of 1 & 2, sq. 730, to wit:

Beginning for the same at a point on the line of lot 4 in said sq. at the N. E. corner of the part of said lot one (1), owned by said Bruff, and running thence S. W. to an angle 48 f't; thence at right-angles to Pa. ave., to a point on the line of said ave. 45 f't, from the S. W. corner of said lot 1; thence N. westerly with said ave. 22 f't; thence by parallel lines to the E. line of the part of lot one (1) hereby conveyed to lot 4, and thence to place of beginning.

Richard W. Bruff et ux. trust to Dooley and Hilton, trustees Cap. Hill B. Ass'n, May 12th, 1871, liber 642, f. 388, rec. May 12th, 1871, to secure payment of $6,000, conveys part of lot 1 in sq. 730, to wit: Beginning for the same at a point on Pa. ave. 121 f't & 6
360 inches from the S. E. corner of said sq., and running thence N. eastwardly at right angles to said ave. 93 f't to the S. line of lot

4 in said sq.; thence due W. to the S. W. cor. of said lot 4; thence in a S. westerly direction at right-angles to Pa. ave. 73 f't & 1 in. to the line of said ave., & thence with the line of said ave to place of beginning.

Dooley and Hilton, trustees Cap. Hill B. Ass'n, release to Rich'd W. Bruff, June 1st, 1871, liber 649, f. 217, rec. June 1st, 1871, recites above trust and releases 17 feet of above conveyance.

Rich'd W. Bruff et ux. trust to J. B. Wimer. trustee, Oct. 3d, 1871, liber 662, f. 59, rec. Oct. 9th, 1871, to secure pay't of $5,000 to Albert Myer, and conveys part of lot 1, sq. 730, to wit: Beginning for the same at the S. W. corner of said lot 1, and running thence east-
361 wardly along the line of Pa. ave. 23 f't & 1 in.; thence northwardly to the rear line of said lot at a point 22 f't from the N. W. cor. of said lot; thence W. 22 f't to the N. W. cor. of said lot; thence S. W. to place of beginning.

Dooley and Hilton, trustees Cap. H. B. Ass'n, release to Rich'd W. Bruff, Oct. 2nd, 1871, liber 662, f. 61, rec. Oct. 7th, 1871, recites trust of May 12th, and conveys same as above.

South twenty (20) feet of lot 4, sq. 730.

Daniel Carroll, original proprietor, and in the division lot 3 and 4 in said sq. remained to him, Nov. 5th, 1796.

Dan'l Carroll, trust, to Cartwright Tippett, Sept., 1825, W. B. 14, f. 273, rec. Oct. 25th, 1825, conveys south 20 ft., with depth of 109 ft. 5 inches, to adjoining lot, numbered two, in sq. 730.

362 Heirs of Cartwright Tippett to Jeannette B. Phillips, Jan'y 28th, 1843, liber W. B. 97, f. 280, rec. Feb. 7th, 1843, conveys same as above.

Walter S. Cox, trustee, to Rich'd W. Bruff, June 28th, 1872, liber 689, f. 42, rec. June 29th, 1872, conveys the s'd 20 ft. of lot 4, in sq. 730, and recites that by virtue of decree of the supreme court of the Dist. of Columbia, dated May 17th, 1865, in cause No. 431, eq. doc. 7, in which J. and J. Lynch vs. Ann Phillips were parties, W. S. Cox was appointed trustee to sell, and sold the same Oct. 24th, 1871, to Rich'd W. Bruff.

Rich'd W. Bruff et ux., in fee, to Mary J. Wheeler, June 29th, 1872, liber 685, f. 354, July 9th, 1872, conveys all that certain piece or parcel of ground, &c., being parts of lots 1 and 4, in sq. 730, beginning
362½ for the same on Pa. ave., on the S. line of lot 1, at a point 23 ft. from the S. W. cor. of said lot 1, and running thence westwardly along Pa. ave. 23 ft. to the S. W. cor. of said lot 1; the' N. eastwardly along the W. line of said lot 1, 73 ft. 1 in., to the N. W. cor. of said lot 1; thence N. along the W. line of lot 4, 20 ft.; thence east 27 ft; thence S. westwardly, to a point 48 ft. from Pa. ave., and 23 ft. from the W. line of lot 1; thence 48 ft. to place of beginning.

Mary J. Wheeler, trust, to Wm. H. Ward, July 1st, 1872, liber 685, f. 359, rec. July 9th, 1872, conveys same as above, to secure pay't of $2,000 to said Bruff.

Title good in Mary J. Wheeler, subject to the above unreleased trusts.

CHAS. N. THOMAS, *Att'y, &c.*

Nov. 7, 1872.

363 EXHIBIT No. 9. [1.25.

"Deed of release.—J. B. Wimer, trustee, to John A. J. Creswell, Robert Purvis, and Robert H. T. Leipold, commissioners of the Freedman's Savings and Trust Company.

"Received for record on the 8th day of December, A. D. 1876, and recorded in liber No. 839, folio 218, one of the land records for the District of Columbia, and examined by—

"S. WOLF, *Recorder*,
"GEO. F. SCHEAYER,
"*Deputy*."

364 "This indenture, made this seventh day of December, in the year of our Lord one thousand eight hundred and seventy-six, between J. B. Wimer, trustee, of the city of Washington, in the District of Columbia, of the first part, and John A. J. Creswell, Robert Purvis, and Robert H. T. Leipold, commissioners of the Freedman's Savings and Trust Company, duly appointed and qualified as such, in pursuance of an act of Congress, entitled 'An act amending the charter of the Freedman's Savings and Trust Company, and for other purposes,' approved June 20th, A. D. 1874, of the second part.

"Whereas Richard W. Bruff and Jane C. Bruff, his wife, heretofore made and executed a certain deed of trust bearing date on the third day of October, in the year eighteen hundred and seventy-one, and thereby conveyed to J. B. Wimer, his heirs and assigns, all that certain piece and parcel of ground lying and being in the city and District aforesaid, and known as and being part of lot numbered one (1), in square numbered seven hundred and thirty (730), and described as follows, to wit:

"Beginning for the same at the southwest corner of said lot one (1), and running thence eastwardly along the line of
365 Pennsylvania avenue, twenty-three feet one inch (23, 1); thence northeastwardly on a line parallel with the west line of said lot, forty-five (45) feet; thence northwardly to the rear line of said lot, at a point twenty-two (22) feet from the northwest corner of said lot; thence west twenty-two (22) feet to the northwest corner of said lot; thence southwestwardly to the place of beginning.

"In trust, to secure an indebtedness of five thousand ($5,000) dollars, as will more fully and at large appear from said deed of trust, recorded in liber No. 662, folio 59, one of the land records for Washington County, in the District of Columbia; and whereas said John A. J. Creswell, Robert Purvis, and Robert H. T. Leipold, commissioners as aforesaid, did, at trustee's sale of March 17th, 1876, purchase said property, subject to the aforesaid deed of trust, as will appear by reference to deed dated March 21st, 1876, and recorded in liber No. 814, folio 311, of the land records for the District of Columbia; and whereas the said indebtedness has been by them fully paid and discharged, and the said parties of the second part are thereby entitled to a conveyance of
366 said described premises, and to have the same released and discharged of and from all lien, claim, demand, or incumbrance by reason of said deed of trust, or anything therein contained:

"Now, therefore, this indenture witnesseth that said party of the first part, trustee as aforesaid, for and in consideration of the premises aforesaid, and further the sum of one dollar, in lawful money of the United States to him now in hand paid by the said parties of the sec-

ond part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, released, and conveyed, and does by these presents, grant, bargain, sell, release, and convey unto the said parties of the second part, their heirs and assigns forever, all the hereinbefore described premises, and all the rights, privileges, and appurtenances to the same belonging, or in any wise appertaining.

"To have and to hold the same unto and to the use of the said parties of the second part, their heirs and assigns forever, free, released, and discharged of and from all claim, lien, or incumbrance by reason of said deed of trust.

367 "In testimony whereof the said party of the first part as trustee, as aforesaid, has hereunto set his hand and seal on the day and year first hereinbefore written.

"(Signed) "J. B. WIMER, [SEAL.]
"*Trustee.*

"Signed, sealed, and delivered in the presence of—
"D. RITTENHOUSE.

"DISTRICT OF COLUMBIA,
"*County of Washington:*

"I, David Rittenhouse, a notary public in and for the District and county aforesaid, do hereby certify that J. B. Wimer, trustee, party to a certain deed of release, bearing date on the seventh day of December, A. D. 1876, and hereunto annexed, personally appeared before me in the county aforesaid, the said J. B. Wimer, trustee, being personally known to me, to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this seventh day of December, A. D. 1876.

"{ NOTARIAL } (Signed) "D. RITTENHOUSE.
{ SEAL. }
"*Notary Public.*"

368 EXHIBIT No. 11.

OFFICE OF THE COMMISSIONERS OF THE
'FREEDMAN'S SAVING' AND TRUST COMPANY.
Washington, D. C., May 25th, 1875.

MICHAEL MCCORMICK, Esq.:

SIR: We hold among the assets of this company, a note for $2,000, drawn to the order of R. W. Bruff, July 1st, 1872, by Mary J. Wheeler, payable one year from its date, with interest at 10 % per annum. This note is secured by deed of trust on property, which, we are informed, you now own, and ought to be paid as soon as possible. Please call and see us about it.

Respectfully,

R. H. T. LEIPOLD,
Of the Comm'rs.

EXHIBIT No. 12.

OFFICE OF THE COMMISSIONERS OF THE
FREEDMAN'S SAVINGS AND TRUST COMPANY,
Washington, D. C., July 12th, 1875.

MICHAEL MCCORMICK, Esq.,
227 Penn. Ave., S. E.

369 SIR: Unless the interest, at least, on note of Mary J. Wheeler

is paid during the present month, we shall have to instruct the trustee to advertise the property for sale according to the terms of the deed of trust.

Very respectfully.

R. H. T. LEIPOLD,
Of the Com'rs.

EXHIBIT No. 13.

OFFICE OF THE COMMISSIONERS OF THE
FREEDMAN'S SAVINGS AND TRUST CO.
Washington, D. C., Nov. 24th, 1875.

MICHAEL MCCORMICK, Esq.,
Washington, D. C.

SIR: Unless the interest, at least, is paid on the note of Mary J. Wheeler for $2,000, dated July 1st, 1872, and secured by second deed of trust on the property now owned by *owned by* you, near the corner of Penna. ave. and 2nd sts. east, by the 1st of December next, the trustees will be instructed to advertise and sell the property, subject to the first mortgage.

Very respectfully,

R. H. T. LEIPOLD,
Of the Commissioners.

370 EXHIBIT No. 14.

OFFICE OF THE COMMISSIONERS OF THE
FREEDMAN'S SAVINGS AND TRUST COMPANY.
Washington, D. C., Dec. 17, 1875.

Gen'l A. J. MYER, *Signal Office:*

SIR: Please inform us of the amount of your claim against R. W. Bruff, secured by a deed of trust on part of lot 1, in sq'r 730. The original amount of the note is $5,000, dated October 3rd, 1871.

We hold a second deed of trust on the same property, and are anxious to know the total amount against it.

Very respectfully,

R. H. T. LEIPOLD,
Of the Com'rs.

EXHIBIT No. 15.

OFFICE OF THE COMMISSIONERS OF THE
FREEDMAN'S SAVINGS AND TRUST COMPANY.
Washington, D. C., Feb'y 24th, 1876.

General A. J. MYER,
Chief U. S. Signal Office, Washington, D. C.:

371 SIR: As we are about to sell the R. W. Bruff property, parts of lots 1 & 4 in square 730, under our deed of trust, we would thank you to send us a statement of the exact amount of your claim, i. e., the amount of principal, and the date to which interest has been paid, also the rate of interest.

Respectfully,

R. H. T. LEIPOLD,
Of the Comm'rs.

EXHIBIT No. 16.

OFFICE OF THE COMMISSIONERS OF THE
FREEDMAN'S SAVINGS AND TRUST COMPANY.
Washington, D. C., Oct. 19th, 1876.

J. B. WIMER, Esq., *Signal Office.*

SIR: We have not yet sold the house No. 136 Pennsylvania avenue, and would like it if General Myer would extend the loan for 6 months or a year.

We are ready to pay the last six month's interest upon presentation of the note.

Very respectfully,

R. H. T. LEIPOLD,
Of the Com'rs.

372 EXHIBIT No. 17.

WASHINGTON, D. C., *Jan'y* 28, 1880.

R. H. T. LEIPOLD,
Office of the Commissioners of the
Freedman's Savings and Trust Co., Washington:

SIR: By direction of Gen'l Albert J. Myer, in compliance with your request, I have to inform you that the total amount of interest received by Gen'l Myer on ⅜ of loan of Oct. 4, '71, made to Mr. R. W. Bruff, $2,588.89, of which amount—

Mr. R. W. Johnson paid	$250
" M. McCormick "	1,225 and
The Freedman's Savings & T. Co	1,113 89
	$2,588 89

Very r'sp'y y'r,

J. B. WIMER.

373 *Authentication of record.—Clerk's certificate.*

CLERK'S OFFICE,
Supreme Court of the District of Columbia.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 15th day of October, 1881.

[SEAL.]

R. J. MEIGS, *Clerk,*
By M. A. CLANCY,
Assistant Clerk.

Justice's certificate.

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 15th day of October, 1881.

D. K. CARTTER, [SEAL.]
Chief Justice.

Clerk's certificate to justice's official character.

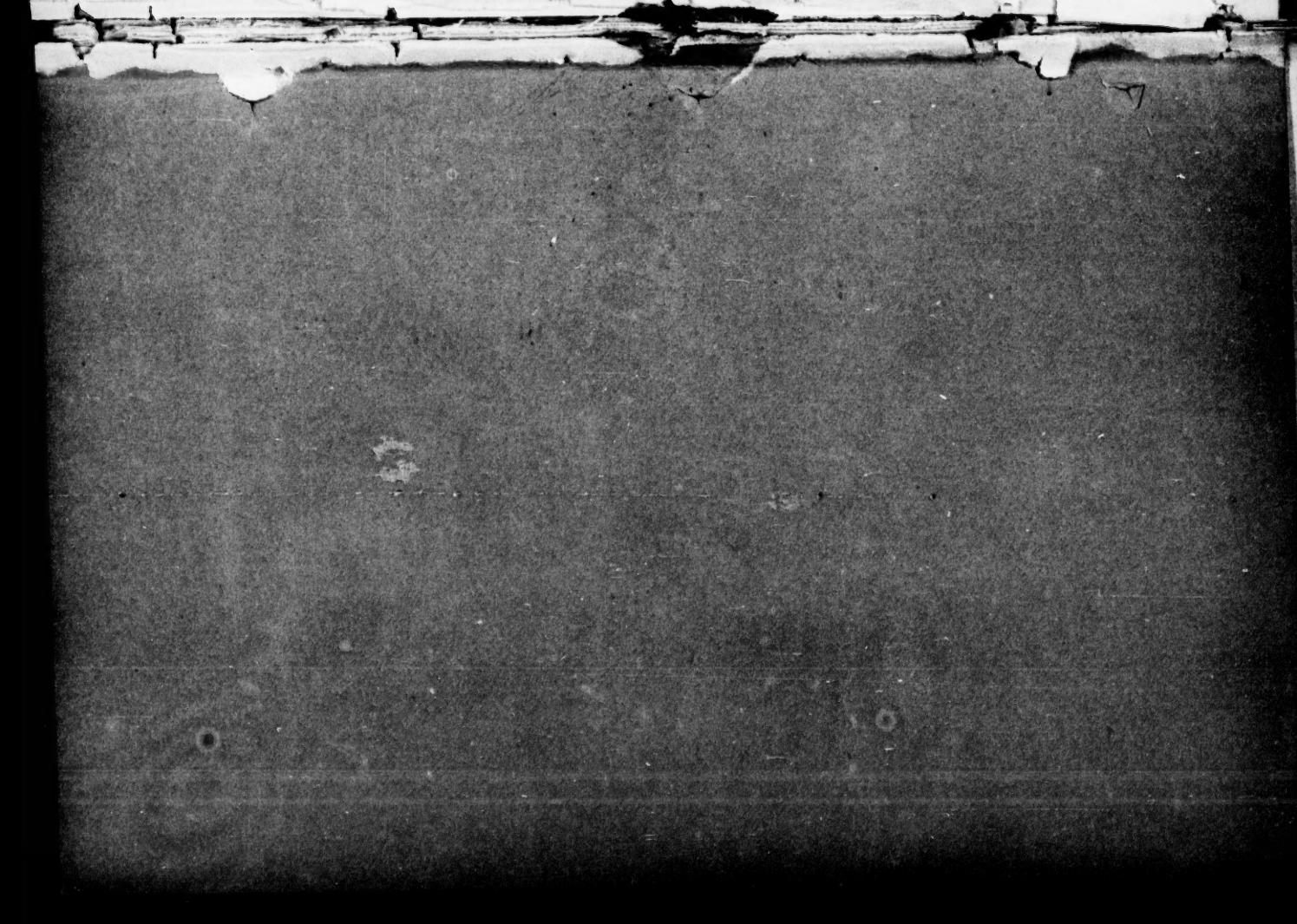
I, R. J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 15th day of October, 1881.

[SEAL.]

R. J. MEIGS, *Clerk*,
By M. A. CLANCY,
Assistant Clerk.

(Indorsement on cover:) No. 1084. Michael McCormick, appellant, vs. John Jay Knox, Commissioner of the Freedman's Savings & Trust Company et al. Dist. of Columbia sup. court. Filed 17th October, 1881.



IN THE

SUPREME COURT OF THE UNITED STATES.

No. 1084, OCTOBER TERM, A.D. 1881.

MICHAEL McCORMICK, APPELLANT,

vs.

JOHN J. KNOX, COM'R OF THE FREEDMAN'S SAVINGS AND TRUST CO., *et. al.*

BRIEF AND ARGUMENT FOR APPELLANT.

JOHN J. WEED,
W. A. MELOY,
Counsel for Appellant.

R. O. POLKINHORN, PRINTER.

IN THE

SUPREME COURT OF THE UNITED STATES.

No. 1054, OCTOBER TERM, A.D. 1881.

MICHAEL McCORMICK, APPELLANT,

vs.

JOHN J. KNOX, COM'R OF THE FREEDMAN'S SAVINGS AND TRUST CO., *et. al.*

BRIEF FOR APPELLANT.

STATEMENT OF THE CASE.

This case comes before the court on appeal from the Supreme Court of the District of Columbia, and involves, with other questions, these, which we desire to press especially upon the consideration of the court, and which may be succinctly stated thus:

FIRST.

A corporation, in violation of its charter, bids off real estate at a trustee's sale and receives an instrument of conveyance: can subsequent legislative ratification of the nugatory act and instrument operate to pass the title still remaining in such trustee?

SECOND.

The payee of a note holds as collateral security for its

payment, forty shares of certain corporation stock, and also a second note made by a third party solely for the accommodation of the maker of the principal note. Such pledgee, on his own mere motion, without consulting the pledgor, or the maker of the accommodation note, chooses to and does surrender to the corporation the 40 shares of outstanding stock.

Shall the pledgee be permitted to charge the accommodation note in his hands with payment of any arrears of the principal note, until after application of the market value of such stock at the time of its unwarranted surrender?

On the 1st of July, 1872, Mrs. Mary J. Wheeler (widow) was the owner of part of lot 1, and part of lot 4, in square 730, in the city of Washington.

Without any consideration whatever, and merely for accommodation, she on that day signed a note for $2,000, payable to the order of R. W. Bruff in one year, with ten per cent interest, and executed a deed of trust upon said property to one Wm. H. Ward, as trustee, with power to sell in case of default. This she was induced to do, relying upon the assurance of Bruff that the note would be protected by him. Rec. ff. 302–305.

On the 13th day of July, 1872, Bruff, for himself and partner, Holzclaw, gave to the Freedman's Savings and Trust Co. a note for $3,000, payable in 30 days, with 10 per cent semi-annual interest, and as collateral security therefor left with the Co. the said $2,000 note, in pursuance of a written stipulation forming part of said $3,000 note, to-wit:

"As collateral security I deposit with said Company" and hereby authorize them *to sell at public or private sale* without notice, upon the non-payment of this obligation at maturity, the following described:

40 shares of Capitol Hill Building Association stock.

W. T. Johnson's check for $3,000—$1,000 paid—due Aug. 7, 1872.

R. E. note, Mary J. Wheeler, for $2,000."

(Record, f. 329.)

Various payments were subsequently endorsed upon the $3,000 note, so that the F. S. and T.Co. admits that on the 9th of April, 1873, not more than $1,045.16, remained unpaid thereon. Rec. f. 102.

On or before this date however, the F. S. and T. Co., by its actuary, without consulting either Bruff or Mrs. Wheeler, handed over to one Gulick, at the time Treasurer of the Building Association, all the 40 shares of stock, claiming that for some reason, unexplained and unproven, (Record, f. 212) the stock should have been turned in for the purpose of a re-issue.

The actuary was of the opinion that he could not enforce the stock as it stood, and that it was therefore worthless. But on the other hand it was claimed and testified to by competent evidence that it was then worth between $1,100 and $1,200. Rec. f. 308.

On the 3d of June, 1873, Mrs. Wheeler conveyed the property to the appellant.

When the three Commissioners took charge of the remains of the Freedman's Savings and Trust Company, they found among its papers the two notes before mentioned; and on the 17th of March, 1876, at their instigation, the trustee Ward sold the property in controversy at public auction, subject to a $5,000 deed of trust to one Wimer, to the Commissioners, for the sum of $1,400, and gave them a deed thereof.

The Commissioners thereupon took immediate possession and held the same (collecting its rents to the amount of $856, net,) until March 17, 1879, since which date Mrs. Wheeler has had possession.

Subsequently to Ward's conveyance to the Commission-

ers of the F. S. and T. Co., they paid off the $5,000 incumbrance before mentioned and took from the trustee Wimer a release of the title to themselves, dated December 7, 1876. The amount paid therefor by them was $6,025.

On the 15th of March, 1879, McCormick filed his bill of complaint in the Supreme Court of the District of Columbia, equity side, averring his interest in the property; the sale by Ward; conveyance to the F. S. and T. Co.; and that such sale was unauthorized, unfairly made, for an inadequate price, invalid, &c., and asking that it should be vacated, an account taken whether anything was due by reason of the premises upon the Wheeler note, and if so, that he should be allowed to redeem.

To this the Commissioners answered, averring the regularity, validity, and sufficiency of the sale and conveyance, and the adequacy of the price, and issue was joined.

On the 17th of April, 1879, with leave, the Commissioners filed their cross bill, setting forth their purchase, their subsequent payment of the prior incumbrance upon the property to prevent a sale of it, and their procurement of the release deed thereof from Wimer, trustee; and also that Mrs. Wheeler had, during the previous month, taken adverse possession of the property, the rental value being $50 per month; that besides the amounts paid for the Ward and the Wimer deeds, they had paid for taxes, repairs, and insurance $519.72 out of rents received.

The cross bill prayed an injunction, that possession should be restored, mesne rents and profits accounted for, and that the proceedings of the Ward sale and conveyance should be ratified and confirmed, and their title declared good, with such other and further, &c.

To this McCormick made answer, denying Ward's right to sell, the regularity of his sale, the Commissioners' right to any accounting, &c., &c., and on this issue was joined by replication.

After various pleadings, motions, and proceedings not material to be mentioned here, the cause came on to be heard on the pleadings and the evidence, and decree was passed in Equity Special Term July 10, 1880 (vide page 30 of Record):

That McCormick (or Mrs. Wheeler) might redeem the property by paying the balance due on the $3,000 note; also, the amount of the Myer $5,000, and interest unpaid by McCormick and Mrs. Wheeler; also, the sums paid by the Commissioners for taxes, insurance, repairs, etc., less rents collected, within thirty days after confirmation of auditor's report ascertaining the same—otherwise the sale by Ward, and his deed to stand in all things ratified and confirmed.

On appeal the General Term affirmed this decree, and thereupon appeal was taken to this court.

Assignment of Errors.

I. The Supreme Court of the District of Columbia erred in deciding that the appellant must pay the balance due on the notes of Holtzclaw & Bruff and Albert J. Myer in order to be entitled to retain possession of the premises described in the pleadings in said suit

II. The said Court erred in holding that Holtzclaw & Bruff were not entitled to be credited with the value of the forty shares of the stock of the Capitol Hill Building Association surrendered by the bank without the consent of the pledgor thereof.

III. The said court erred in refusing to set aside the sale of said real estate made by the trustee Ward to the Commissioners of the bank on the 17th day of March, 1876.

IV. The said court erred in deciding that the bank became subrogated to the rights of A. J. Myer by virtue of payment of the note of R. W. Bruff to said Myer for

five thousand dollars, and the taking of a deed of release of said premises from the trustee to the bank.

V. The court erred in ignoring the terms and conditions of the principal stock note executed by Holtzclaw & Bruff to the bank for three thousand dollars, dated July 13, 1872, for the payment of which, in part, the note of Mrs. Wheeler was held as collateral security, and which expressly limited the power of the F. S. and T. Co. to a sale of the said collateral note, thereby denying the company power to sue it, or to prosecute the Ward deed to foreclosure by sale.

VI. The said court erred in declaring that there was a balance due on the $3,000 Holtzclaw & Bruff note.

VII. The said court erred in holding the F. S. and T. Co. competent in law to purchase and take title to real estate.

ARGUMENT.

I. The Freedman's Savings and Trust Company was without power to purchase real estate under a deed of trust held by it as security for the payment of a note.

The court below, by its decree from which we appeal, assumed that it had power to make valid a conveyance of real estate to the Freedman's Savings and Trust Company.

We submit that the company on the 17th of March, 1876, had no power to make, purchase, or take conveyance of real estate; nor had the court power to validate the conveyance upon any terms whatever.

The Freedman's Savings and Trust Company had originally no power, nor any right to invest one dollar in real estate, nor to take conveyance of one square foot of ground. To do so would not only have been nugatory, but would have subjected every trustee taking part in the transaction to imprisonment like a felon for his base betrayal of a

sacred trust. Nothing is more evident than this—except it be that the corporation's whole career, from the grand flourish of humanitarian zeal at the outset to its final ignominious burial in utter, wretched insolvency and obloquy, was a series of wanton violations of the purpose of its conception, and the law of its existence.

It was not a stock corporation. Not a dollar of capital was ever invested in it by its corporators. No corporator ever had a right to call any interest in its fortunes his individual property, nor any right to the enjoyment of one dollar of its gains.

The law of 1865 declared certain gentlemen who may or may not have been previously consulted, but whose names had the savor of high honor and integrity, a board of trustees: gave them a corporate name by which to sue and be sued, and charged them and their successors in this corporporate name, with the duty of receiving the savings of a poor, ignorant race just emancipated from a bondage of three centuries, and set, as wards of the nation, upon the plane of responsibility and in the paths of voluntary industry. It charged them with the care of their money and and of its investment in the securities of the Nation itself. There was no discretion given them as to the employment of these deposits. They had no other source from which to derive a dollar of capital: no way of increasing the amount except by the interest which the Nation itself pledged its unsullied honor to meet according to the letter of its bond.

These trustees were forbidden to diminish the gains of the freedmen by any remuneration to themselves. Their subordinates could not be paid except out of the fund arising from the difference between interest allowed on deposits, and that received from investments. To make this surplus fund as small as possible, and never more than sufficient barely to defray the unavoidable and reasonable expenses of conducting the business, the trustees were com-

five thousand dollars, and the taking of a deed of release of said premises from the trustee to the bank.

V. The court erred in ignoring the terms and conditions of the principal stock note executed by Holtzclaw & Bruff to the bank for three thousand dollars, dated July 13, 1872, for the payment of which, in part, the note of Mrs. Wheeler was held as collateral security, and which expressly limited the power of the F. S. and T. Co. to a sale of the said collateral note, thereby denying the company power to sue it, or to prosecute the Ward deed to foreclosure by sale.

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These trustees were forbidden to diminish the gains of the freedmen by any remuneration to themselves. Their subordinates could not be paid except out of the fund arising from the difference between interest allowed on deposits, and that received from investments. To make this surplus fund as small as possible, and never more than sufficient barely to defray the unavoidable and reasonable expenses of conducting the business, the trustees were com-

manded from time to time to scale the interest on deposits so as to apply, as nearly as might be, to the benefit of the depositors all such regular gains left after defraying the modest necessary expenses, *including rent of the* ROOM in which the business was done.

The whole appearance of the scheme gave it the air of a most noble charity. All its fortuitous gains were by the law dedicated to the moral and intellectual elevation of this long-suffering depressed race.

But here we find no provision for the purchase of real estate—none for the holding of such property—no opening for speculation on the rise of city lots. This could hardly have been more clearly forbidden by express words of denial. And who can fail to see that had the business of this fiduciary corporation been honestly conducted in obedience to the spirit and letter of the charter, the Bank would have remained to this day a blessing to this people, instead of a snare, a delusion, and a curse?

It would be no difficult task to show how this monstrous diversion of a beneficent scheme was wrought. It requires only an analysis of some of the other provisions of the bill, and the development of the application and union of the baser laws of human nature and self-interest. It is astonishing how base an amalgam comes from the purest gold of theory when melted down with human nature in the crucible of practice.

But this is apart from our argument.

Within hardly more than five years we find the successors of the first trustees asking from Congress and obtaining the further act of May 6th, 1870, to ratify their fraudulent misapplication of trust funds to the acquisition of certain specified lots in the city of Washington, those opposite the north part of the Treasury Building. This act allowed the trustees to hold those particular lots, and, alas for the poor freedmen! "to improve them," at their unlimited pleasure.

But so far, this act only confirms our view that the trustees had no power to acquire real estate. It was no more in that regard than the legislative condonation of a specific single offence. It can no more be construed to give general power and right to violate the spirit and destroy the object of the charter than the Savior's release of the woman "taken in the act," could be construed into a bidding to go and sin yet more.

Indeed, it may well be questioned if the act itself does not run too closely to the forbidden line of Congressional power even, by violation of the vested rights of all the then depositors. Were not all the funds then in the bank the property of the depositors pro rata, under the contract of the charter, as their inviolable, vested right? The corporation itself was but the vessel to receive and hold. The deposits had all been made in the faith that they would be placed in United States obligations, and that eventually both the proceeds of those obligations and their net increase would be distributed pro rata among the depositors. They had been made in the faith that no other disposition of them would be attempted. And again, no other person, natural or artificial, had a particle of interest, present or contingent, in a dollar of the funds—no lawful power to apply them otherwise than in strictest compliance with the plain limitations of this contract of deposit. We assume to call the act of incorporation both a charter and a "contract of deposit," and we submit that we are clearly right in doing so.

To apply those deposits, too, otherwise than as named in this contract, was characterized by the law of 1865 as a wanton misapplication of the property of others—a criminal misdemeanor.

Under what specious pretences Congress was thus made to appear to countenance this instance of misapplication of trust funds, we know not; but if this act did to this extent

trench upon vested rights and the contract of the parties, as we believe it did, then to that extent it was void, and gives no more than the mere appearance of countenance to the fraudulent and void action of the trustees. Nevertheless, they availed themselves of it with a most riotous industry until thousands upon thousands of dollars placed in their hands by the guileless confidence of children had been squandered and lost in the improvement of these lots, and in swelling the fortunes of stonecutters, masons and builders, friends of the ring.

If these views of the original purpose of the institution, its duties and limitations of power, and of the rights of its depositors, are correct, then it must be conceded that every subsequent enactment seeming to favor any operation or mode of business which might defeat such purpose, so laudable and noble, should be scrutinized most closely, and construed most strictly.

We submit, therefore, that the act of 1870 in no case sanctioned the purchase of real estate beyond the six parcels severally designated in the law.

Nor has Congress ever authorized the trustees of the F. S. and T. Company, or their successors the Commissioners, in express terms or by necessary inference of power, to purchase real estate, prior to the act of 13th February, 1877.

It is true the act of May 6, 1870, allowed the investment of subsequent deposits, to the limited extent of one-half thereof, in bonds or notes secured by mortgage of real estate of a cash value not less than twice the amount of the loan or investment, and it will be pretended that in this way—covertly, inferentially—Congress then gave the power to buy and take title to real estate.

This, however, can by no means follow, *unless it was the intention of Congress* to so impart this power, before studiously denied.

Where shall we learn whether Congress then had such

intention, unless from consideration of the act itself, with all its statutory surroundings, illuminated by the spirit which glows in the first charter?

Look at it, then, in this grand light. Do we find evidence there of such intent? No! On the contrary, Congress seems most careful to evince the opposite intent. With most abundant caution it limits the loan in each case in such a way as to *ensure* the realization of money, and nothing else, whenever the loan shall be called in. We must bear in mind that nothing but money could answer the purpose—could satisfy the contract rights of the depositors or the sacred obligations of the corporation. When the depositor should call for his money the bank could not answer him: "We have buried it in the soil of a farm; we have walled it up in a noble pressed-brick front. Here, take that and be satisfied. Poor, naked, and hungry, be ye therewith filled, warmed, and clothed." No, not even though their trustees could truly add: "They are worth in cash twice the value of your money." The poor, shriveled, toil-worn hands would be still outstretched, and empty, ready to be lifted only to invoke the judgment of heaven upon their betrayers.

Congress intended to make such violation of their rights impossible in any case. It did not intend to sanction any doctrine of vicarious atonement for pecuniary obligations by making real estate even at half its reasonable cash value the equivalent of money deposited. Neither did it intend by that provision to make the Bank a rich "bloated corporation," through acquisition of real estate at half its value. Of what avail could it be when faith and duty called the Bank to restore money to an amount at which the corporation would acquire the property, alias, have it thrown upon its hands in open market, unless it could instanter convert that property into the sum required to meet the demand. How could the property have been acquired at

all, in the competition of open sale, if anybody would buy for the amount of the loan? It is not in the nature of things that 100 per cent profit shall ever fail of the acceptance of Capital, if Capital is allowed to see it.

These considerations must bring us to the conclusion that Congress did not intend the corporation should ever put one dollar of its deposits in the purchase of real estate. All the provisions of the act were studiously designed to preclude—to shut the door impregnably against the possibility of such a result. Nor could it ever become necessary, or even desirable, if the directions of the law were followed.

How then can it be argued to authorize, or justify, or permit a purchase of real estate, when both the legislative intention and the necessity are wanting?

But they iterate and reiterate that the power to buy and take title is a sequence of the power to loan upon real estate security, because otherwise they would be liable to loss from a sacrifice of the property—from a sale below the amount of the loan. We answer, the sequence of necessity as a source of power cannot be tolerated if Congress at the time of passing the act intended it should not be.

Congress said: You must take care of this people's money. You must pay it back to them, restore it—when called for. You must make your loans upon security with such a margin of value as shall make it impossible to fail of finding a purchaser who will take the security and enable you to restore the deposit when called for. If buildings form any part of the value of the security, as they are liable to be destroyed by fire, you must have them insured, and so no contingency of depreciation can ever deprive you of the power to meet your duty on the instant of its call.

What more could Congress have done to manifest its intention that the specious plea of necessity should never be raised to justify the taking of real estate?

In the case at bar, would they be reduced to any plea of necessity as a source of capacity to take title, if they had done their duty according to the law? The law said, "You shall only loan upon real estate security." But these faithless guardians of the treasure loaned Bruff $3,000 upon no direct real estate security for one dollar of it. To the extent of $1,000 of this sum they had no pretence of such security at all. The law said this security must be of double the value of the loan, on a cash valuation. The corporation itself avers that this real estate was worth no more than $7,000, all told, and had two prior incumbrances upon it, one for more than $5,000, upon this alone. And yet they loaned upon it $2,000 more! They wantonly misapplied the funds entrusted to their care. Congress, in the law, stamps them for this with the brand of crime, and makes them liable to imprisonment, and now they seek to divert attention from their own guilt by crying out against us. They seek to pay back the money they first stole from poor freedmen by filching it now from the pocket of this widow, beguiled into loaning her accommodation note.

But if, as we have sought to show, Congress solicitously withheld from these trustees the right and power to buy real estate, neither the corporation nor its substitute, the Commissioners, had capacity to take a deed on the 17th of March, 1876. The Ward sale failed then because the property was knocked down to one not capable of taking a deed—and this, without regard to the antecedent question of fact whether there was any unpaid balance, due upon the $3,000 note, for which the Wheeler note was chargable as a security, to give force to Ward's power to sell.

Ward's deed then was a nullity, and still is unless subsequent acts of Congress have had power to give it validity. Except for such subsequent legislation the court below should have declared the deed invalid—the title still in Ward—and a decree proposing to vitalize it in any con-

tingency whatever, must be pronounced radically wrong, and reversed.

But how could any subsequent act of Congress give it validity for any purpose? If invalid when given, the title remained in Ward—the sale was nugatory—all stood precisely as if no attempt to sell had been made. This would be the exact situation when the new act of Congress intervenes.

Nearly a year passes after the futile forms of a sale are gone through with. At length the Commissioners themselves were satisfied that they were devoid of capacity to buy and take title. They come to Congress and ask that the power be given them, and Congress on the 13th of February, 1877, first gave "power to buy in for the benefit of said Company any real or other property which may be offered for sale at public auction to pay debts or liabilities due said Company." In the second section of the act Congress declared its *ratification* of "the action of the Commissioners in buying in pieces of real property, heretofore purchased by them," &c.

If *post facto* legislative enactments have power to transfer titles to land, this is undoubtedly sufficient, and the court below was right in declaring the validity of Ward's deed by virtue of this gift of a new birth. But is not such a doctrine preposterous? Acts of Congress may pass the title of the National domain: may convey any property which is in the disposal of Congress, but it cannot make my lands to be the lands of any other man or corporation by mere words of conjuring. Is the idea to be entertained for a moment that Congress may intervene between A and B and declare the lands of A to be the lands of B? There can be but one answer to this question. But if this is beyond the power of Congress, then the act, so far as it was intended to affect the then past, was wholly ineffective; the title is still in Ward, all acts of Congress to the contrary notwithstanding.

Finally, the court could not by any decree of forfeiture do what Congress before the 17th of March, 1876, had denied should be done, and after that date was impotent to ratify. It could not make a title pass by declaring that the Ward deed should be considered good and the sale effective, provided McCormick and Wheeler did not pay within a specified time. Possibly this struck the court below as an equitable thing on the whole, and "Solomon in all his glory" and despotic power might have solved all difficulties by such a *tour de force*. But it must be remembered that Solomon combined in himself all legislative and executive with judicial functions, and had plenary power to enlarge his jurisdiction to fill every exegency. Our court, however, cannot create power by merely overlooking the limits of jurisdiction. The court has not jurisdiction to confer power on the F. S. & T. Co. The statute is their only source of capacity. If the statute book did not give the company capacity to buy real estate generally and take title to lands at the date of Ward's sale the whole transaction is inoperative, and Ward may sell over again, *provided there is anything due on the note secured by the deed of Mrs. Wheeler to him.*

In conclusion of this branch of our argument we submit that the deed from Ward to the company should be declared void, and the sale of the 17th of March, 1876, vacated, leaving the trust deed from Mrs. Wheeler to Ward in full force, unless further the court shall be satisfied that the debt secured thereby has been wholly discharged.

II. The Sale made by Ward under the Deed of Trust executed by Mrs. Wheeler to secure the payment of her note to Bruff was void, because at the time of said sale there was nothing due on the note of Holtzclaw & Bruff, for the payment of which the note of Mrs. Wheeler was in part held as collateral security.

The *contract* under which the Freedman's Savings and Trust Company acquired its right to the note of Mrs. Wheeler was a contract exclusively under the law of *pledge* and not under the law merchant. The note was not *purchased* by the Trust Company, but was *deposited* by the payee as collateral security for the payment of a note of the payee held by the company. The note of Mrs. Wheeler was held only under the stipulations of the principal note of the pledgor for which it stood as collateral security; the rights of the company, therefore, in respect to the note are to be determined by the principles of the law of *pledge*, and not by those of the law relating to negotiable securities.

The first principle of that law is that if the principal debt be *paid*, the *pledgee* has no right to retain, use, or dispose of the property pledged. The right of the pledgee in respect to the collateral security is limited to the payment of the debt of the pledgor, for which the collaterals are held. When collateral securities are pledged for the payment of a debt, the pledgee cannot retain such securities, nor recover on them except to the extent required to satisfy and pay the debt for which they are held as security.

Williams vs. *Smith* 2 Hill 301;

Allaire vs. *Hartshorne* 1 Zabriskie 665;

Duncan Sherman & Co., vs. *Gilbert* 30 N. J. L. R. 527;

Fisher vs. *Fisher* 98 Mass. 303;

Stoddard vs. *Kimball* 6 Cush. 469;
Chicopee Bank vs. *Chapin* 8 Metcalfe 40;
Atlas Bank vs. *Doyle* 9 R. I. 76;
Maitland vs. *Citizens Bank*, 40 Md. R. 540;
Steers vs. *Benson* 2 Ills. App. 560;
Union Bank vs. *Roberts* 46 Wis. 373.

The above authorities also establish the proposition that the holder of negotiable notes or bills, which have been pledged as collateral security, is protected as a *bona fide* holder of such securities only to the extent required to pay and satisfy the note for which the securities are so held. There is no evidence as to what the contract between Holtzclaw and Bruff, and the bank really was, except that which is furnished by the stipulations of the stock note, because the note executed by Mrs. Wheeler to Bruff, is not in evidence. It must be presumed, therefore, that the only contract which exists in regard to the transfer of Mrs. Wheeler's note to the bank, is contained in the stock note of Holtzclaw and Bruff, under which it was pledged The bank i. e. "The Trust Company," took the note under the contract of pledgee, and it well knew that its rights in that note, were those of a *pledgee*, and not of an endorsee of commercial paper. It was not ignorant of the fact, that it could only hold that note for the purpose of securing the payment of the note of Hotzclaw and Bruff, and that it could only collect such part thereof as was required to pay that note. It knew that Holtzclaw and Bruff had a residuary interest in the note, and that if their note to the Trust Company should be paid in full, from the other collaterals deposited at the same time, its right to retain the note would be extinguished. No such contingency could have resulted had the Company *purchased* or discounted the note of Mrs. Wheeler. The legal incidents and rights of a taking and holding of negotiable bills or notes as collateral security are stated with great clearness by Mr. Justice

Woodbury in the case of *Babcock* vs. *Smith* 2 Woodbury and Minot, pp. 287 288, where upon this subject he used the following language:

"If it is satisfactorily shown that he (the pledgee) knew what was the consideration for them, and that it was either fraudulent or of little value, *or if he took them without such knowledge and notice, yet not as a purchaser in the usual course of business*, whether for a new or a past consideration, but rather as a pledge to secure existing liabilities, and much more if he took them to secure future liabilities, the notes are open to any defense they would be if still continuing in Cross's (the indorser's) hands. Among those defenses is fraud, or *want of adequate consideration*, or a set-off against the promisee. Without regard to notice of fraud, or of enough to cast a shade on their consideration, the first and best test on this subject strikes me as being whether there was an absolute sale of the notes? Was there any residuary interest left in the vendor or the indorser? Any equity of redemption? Any right to have a return of them on the payment of money or performance of some act? If so, it was not within the protection to negotiable paper in the market, as that principle is to protect a purchaser, and not a mortgagee who takes the notes as security only for other matters, instead of buying them in market overt as negotiable paper. He holds them merely as he would unnegotiable paper, or personal property pledged for a like purpose. In such an event he does not hold them for an agreed price paid outright for the notes or credited for them on a former debt at the time of receiving them, instead of when collected; nor as other property bought, *purchased*, and not lodged merely as security. The destruction or loss or failure in any way of this last property would fall on the assignor, while of the former it would fall on the assignee or buyer."

It is therefore clear, not only upon authority but upon principle, that the rights of a pledgee of negotiable paper, and those of an endorsee, are not in any respect to be determined by the same legal principles. The distinction between the right of a holder of such paper, in these different capacities, are distinct and striking. If the paper is held

as a pledge it can only be collected and the proceeds retained, upon the default being made in the payment of the note of the pledgor, and even then the right to collect the note is limited to the amount requisite to pay the note of the pledgor. The rights of a holder, by endorsement, are not in any respect thus restricted, for if he takes the note without notice of any infirmity of consideration, he may collect from the pledgor of the endorsed note the full amount due thereon. If the note is received as a pledge, the pledgee is not required to protest it in order to hold the pledgor. The pledgee may show that the maker was insolvent and nothing could be collected. In that case the pledgor continues liable on his principal note. The contract of indorsement relieves the indorser from liability, if the note is not protested, upon default being made in its payment by the payor; and the insolvency of the payor is no excuse for a failure to make such protest. The right to sell and transfer the note is always, and everywhere, a legal incident of the indorsement. The right of a pledgee in respect to such paper does not extend to such transfer and sale except under the conditions and terms of the pledge. He holds the paper as trustee for the pledgor and if he sell, or otherwise disposes of it, it must be under the terms of the contract of pledge, and upon reasonable notice to the pledgor, unless that notice is expressly waived. And it has been held that where notes were indorsed by the payee in blank; and delivered to his debtor as collateral security for the payment of a debt not yet due, that even the pledgee could not sell them without giving notice to the pledgor of the time and place of sale.

The case of Goldsmith, vs. The Trustees of the First Methodist Episcopal Church of Worthington, 25 Minn 202, was a case illustrating this principle. In that case the Church had executed its certain promissory notes payable to the order of Miller. Miller

pledged five of these notes to secure the payment of a debt which he owed to Bartlett, and he indorsed the notes in blank and delivered them to Bartlett, Miller's note remaining unpaid. Bartlett thereupon notified him that unless the note was paid in ten days he should proceed to sell the notes at public or private sale, and he did sell them in December, 1876, to three of the trustees of the church. In January, 1886, Miller *assigned* the pledged notes to the plaintiff, and he brought his action against the trustees to have the sale made by Bartlett declared void and the notes delivered to him. The court, in deciding the sale of the notes made by Bartlett to the trustees void, said:

"The District Court held that the notice of the intention to sell the notes by Bartlett was insufficient, and the sale would have been void for that reason if the notes had not been indorsed by the payee in blank; and the *purchasers*, although they were the trustees of the corporation, came within the protection accorded to *bona fide* indorsers of negotiable paper." The Supreme Court, in reversing the judgment, said: "This would be so (that the purchasers were *bona fide* holders of the notes) were it not for the fact that the purchasing trustees, at the time of the purchase, knew that Bartlett held the notes as a pledge to secure the debt from Miller; knew, in effect, that his interests, and rights, and power over the notes were not those of an ordinary indorser in the usual course of business, but those of a pledgee, and that his power to sell depended upon his giving the proper notice. Having this knowledge, the blank indorsement cannot protect them in purchasimg at a sale which the holder of the notes had no right to make."

These principles are important here in view of the fact that there was no means except that provided in the stock note, by which the Trust Company could acquire any title, either to the note of Mrs. Wheeler or to the trust deed, by which its payment was secured.

The stock note required either a public or private sale of the collaterals, which were specified in the principal note. That was the only means by which the title of the

pledgor of said collaterals could be completely divested. There is no evidence that any such sale was ever made, and, n fact, none ever was made. It was competent for th pledgor and pledgee to stipulate as to the manner in which the title of the pledgor in the collaterals pledged should be extinguished, and the powers as well as the duties of the pledgee are to be determined by that stipulation. The assertion of this proposition does not in any respect violate any of the principles applicable to negotiable paper; for such paper. when issued and put in circulation, is property, and, like other property, is the subject of contract or agreement

III. The sale made by Ward, trustee, to the Trust Company, was void, because the note of Holtzclaw & Bruff, for the payment of which Mrs. Wheeler's note was held as collateral security, was fully paid, satisfied and discharged, as between Holtzclaw & Bruff, and the Trust Company, and when that was accomplished the plebgee of the collaterals—i. e., the Trust Company—had no power to use the collaterals or to sell any of the property by which their payment was secured.

The right of the Bank to resort to the use of the collateral securities depended upon the non-payment of the principal note. Default having been made in the payment of that note, resort was had to the other securities, *and before the note of Mrs. Wheeler became due, the Trust Company, either by the receipt of money from the other collaterals, or by the manner in which it dealt with the other collaterals, had released Holtzclaw and Bruff, from all liability to pay the principal note.*

The evidence shows that between August 15th, 1872, and April 9th, 1873, there was collected from other collaterals, and paid to the Bank, the sum of *two thousand and fifty-*

one dollars and sixty-nine cents ($2,051.69), leaving due on the principal note only the sum of one thousand and forty-five dollars and sixteen cents ($1,045.16), for the payment of which the Trust Company held *forty* shares of the stock of the Capitol Hill Building Association. This stock was, *without the consent* of the pledgors, surrendered by the Trust Company to the treasurer of the Building Association. The testimony is clear that the stock surrendered by the Bank was of sufficient value to have fully paid and satisfied the principal note of Holtzclaw & Bruff.

BRUFF, the pledgor, being interrogated as to the value of this stock, testified as follows:

"Q. 27 Mr. Bruff, what was the value of this stock that was put in there—these forty shares of Capitol Hill Building Association stock that were put in there as accompanied with this $3,000 check?

"A. I think it was in the neighborhood of $1,200.

"Q. 28. The value of it, the whole of it?

"A. Yes, sir; as well as I can recollect at this date."

Record, p. 87.

W. T. JOHNSON, the Secretary of the Association, testified in regard to the value of the stock as follows:

Q. 17. Mr. Johnson, I believe you were Secretary of the Capitol Hill Building Association, and I take it for granted you know something about the value of that stock specified in the Sherman note, 40 shares.

WITNESS. Not the Sherman note.

Mr. SMITH. I mean the Holtzclaw and Bruff $3,000 note.

Ans. Yes, sir.

Q. 18. What was the value of that stock, the 40 shares of stock so specified at that time, and how do you know its value?

Ans. I can best ascertain that by referring to the constitution of that association (producing pamphlet). I have a copy of it here. The 13th article——

Mr. TOTTEN. I want the paper filed if it is to be relied upon.

(The pamphlet referred to is here offered in evidence, marked Exhibit No. 18, and hereto attached.)

Q. 19. Just state the value of the stock and how you ascertained it?

Ans. The 13th article of the constitution reads as follows (reading):

"Each stockholder shall pay a monthly installment of one dollar per share on the first Tuesday of each month commencing July 5th, 1870."

Consequently, in July, 1872, there would be 25 monthly payments of one dollar per share, which would be exactly $1,000 of cash paid into the treasury of the association. The stock at that time was selling from three to four dollars per share premium: the association itself was paying 10 per cent. premium on the stock, so that the value of that stock was between $1,100 and $1,200 at that time.

Q. 20. What was the standing of that building association to which you now refer at that time, and what was its standing at the time the stock was surrendered?

Ans. That association had been up to that time and was at that time in a flourishing condition, and so far as I have ever heard, has always been a solvent association.

Record, pp. 98, 99.

Upon this testimony, taken in connection with the admitted fact that the Trust Company surrendered these *forty* shares of stock to the Treasurer of the association before Mrs. Wheeler's note became payable, it cannot be doubted that, upon well-settled legal principles, Holtzclaw and Bruff were released from all further liability on their note held by the Trust Company. The surrender of this stock by that company, without the consent of the pledgor, rendered the Trust Company liable to account Holtzclaw and Bruff for the value of the stock; and upon such accounting, the note of Holtzclaw and Bruff, held by the Trust Company, would have been completely satisfied.

No legal proposition is more clearly established than that which asserts that the pledgee of collateral securities is liable to the pledgor for a misuse or a misappropriation of such securities.

The case of the *Union Trust Company* vs. *Rigdon*, 93

Illinois Rep., 458,was the case of a surrender by the pledgee to the maker of certain promissory notes which the pledgee had received from a debtor (who was the pledgor of the notes) as collateral security. Without the knowledge or consent of the pledgor the pledgee compromised and surrendered the notes upon receiving from the maker the amount due from the pledgor. The court held that the pledgor was entitled to recover the full value of the surrendered notes, deducting therefrom the amount due from the pledgor. In discussmg this question the court said:

"The law is well settled when there is no agreement otherwise, the pledgee in possession only takes a lieu on the property as security, and is bound to keep the pledge and not use it to its detriment and to re deliver it on payment of the debt. His character is that of a trustee for the pledgor, to return the property if redeemed, and if not redeemed then first to pay the debt, and second to pay over the surplus, and *he cannot so deal with the trust property* as to destroy or even impair its value."

In that case also the proposition was expressly asserted.

"That the transfer of promissory notes indorsed as collateral to secure a debt of the pledgor with express written autority to sell the same, or any part thereof, at public or at private sale *does not authorize the pledgor to surrender the collaterals to the maker thereof after their maturity, without an effort to collect the same, for a sum less then is due thereon, but* for enough to pay the principal debt. Such a transaction is not a sale as contemplated by the parties to the pledge, but is a compromise and renders the pledgee liable in an action on the case to the pledgor for the injury the latter thereby sustains, and if the pledgee at the same time sells other collaterals to the same debtor the whole transaction being a tort, the pledgee may recover to the whole."

In the case *Hawks* vs. *Hinchcliffe* 17 Barbour 492, the Court discussing this question used the following language;

"The creditor holds all collateral securities as the agent or trustee of his debtor to be collected for the latter, in dis-

charge of the principal debt, and to be surrendered when such principal debt is paid, before resort to the securities is had. And whenever he undertakes to transfer them to third persons *without the authority of the principal debtor*, the law will hold that he has elected to take them at their face in satisfaction to that extent of the principal debt."

The following authorities may also be cited to sustain the foregoing propositions;

Story on Bailments, Sec. 321;
Tyler on Pledge and Usury, 580;
Wheeler vs. *Newbold*, 16 N. Y., 393;
Garlick vs. *James*, 12 Johns, 145;
Depuy vs. *Clark*, 12 Ind., 42;
Paulin vs. *Kaign*, 5 Dutch, (N. J.) 480.

Upon these authorities therefore, it is clear, that the Trust Company, is to be charged in the settlement of the debt of the pledgee, with the value of the securities surrendered by the pledgee, and if the Trust Company is so charged, the principal note of the pledgor is entirely extinguished. The Trust Company sought to enforce the payment of Mrs. Wheelers note, which was held by it as collateral security for the payment of the principal note of the pledgor. It was, and is still her right to show, that the principal note had been paid before her note became due. If that fact were shown, then the right of the Trust Company to enforce the payment of her note, *held only as colateral security* ceased. The Trust Company, were *bona fida* holders of her note, only to the extent required to pay the principal note; and if that company so used or disposed of the collaterals, which it held as security for the payment of the debt as to impair their value or to render them useless to pledgor, it is liable for such value thereof as may be shown by the evidence.

Allaire vs. *Hartshorne*, 1 Zabriskie, 665;
Williams vs. *Smith*, 2 Hill, 301;

Duncan Sherman & Co's., Gilbert 30, N. J. L. R., 527;

Fisher vs. *Fisher*, 98 Mass, 303;

Chicopee Bank vs. *Chapin*, 8 Met., 40.

Atlas Bank vs. *Doyle*, 9 R. I., 76.

Maitland vs. *Citizens National Bank*, 40, Md., 540.

The note of Mrs. Wheeler, which the Trust Company held as collateral security, was an accommodation note wholly without consideration as between her and the pledgors, and the pledgors could not have enforced its payment. When the note of the pledgors was paid and extinguished, the Trust Company had no more right to proceed to the collection of the said note, nor any higher right to enforce its payment, than the payee of the note would have had. The action of the Trust Company in proceeding to sell the property by which the payment of her note was secured, *after the payment of the principal note for which it stood as security*, was an act in every respect unauthorized by law, and the sale of the real estate mortgaged to secure its payment, made for the purpose of obtaining payment of that note, was illegal and void.

IV. The sale made by Ward to the Trust Company was void also, for the reason that the property sold was held by the company as pledgee, and it could not become the purchaser of property which it had acquired and held in that character.

No principle of law is more clearly established nor adhered to with greter tenacity than this. The pledge of Mrs. Wheeler's note, with the deed of trust by which its payment was secured, gave to the pledgee no rights in respect thereto except such as were contained in the contract of pledge under which it came to the possession of the Trust Company. The assignment of a mortgage to a

creditor *as collateral security* is, in effect, a mortgage of a mortgage. The assignee cannot, by obtaining a decree of foreclosure, get rid of his obligation to the assignor, but will, on the contrary, hold the premises in trust for the latter, subject to the lien of the debt which the assignment was designed to secure.

White & Tudor's Leading Cases in Equity, Vol. 1, p. 246;

Slee vs. *The Manhattan Co.*, 1 Paige, 48;

Hoyt vs. *Martinese*, 16 N. Y., 238;

Price vs. *Reeves*, 38 California, 38.

The deed of trust came to the possession of the pledgee, The Trust Company, only by virtue of the contract of pledge; it was an incident of the note which was the subject of pledge. It is clear that the pledgee could have acquired no right or title to the note which he held in that character by a sale thereof to himself; and if he could not become the purchaser of the note which he held in pledge, it is difficult to undertsand how or by what right he could become the purchaser of the property by which the payment of the note in pledge was secured. The right and power to sell the real estate was an incident of the note; and followed it into the possession of any one to whom the note should be sold, as required by the contract of pledge. The relations of the pledgee both to the note, and to the security by which its payment was secured, is such that he is prohibited from being the purshaser of either.

In the case of the Middlesex Bank vs. Minot, administrator, 5. Metcalf, 325, the case was as follows: John K. Simpson borrowed from the Middlesex Bank seven thousann two hundred dollars, for the payment of which he pledged *seventy-two* shares of the capital stock of that bank. The agreement by which the bank held the said shares of stock as collateral security provided that upon default being

made in the payment of the note the bank should have the right to sell the shares "at public or private sale." Default having been made in the payment of the note the bank placed the shares of stock in the hands of an auctioneer for sale at auction. They were so sold and the bank became the purchaser. Upon this state of facts the court said:

"The plaintiffs had full authority to *sell* the bank shares which were pledged to them, and a sale to a third person would have passed the property. But they could not be the purchasers. Nothing, therefore, passed by the form of a sale at auction in which they purchased in the shares."

Hatch vs. *Hatch*, 9 Ves., 292.
Fornam vs. *Brooks*, 9 Pick., 212.
Hestonville R. R. Co. vs. *Shields*, 3 Brewster, 237.
The Bank vs. *Dubuque & Pacific R. R. Co.*, 8 Iowa, 277.
Hoyt vs. *Martinese*, 16 N. Y., 233.
Chicago Artesian Well Co. vs. *Cory*, 60 Ill., 73.

The Trust Company was therefore both the seller and purchaser of the real estate which it held in pledge. It was, by the principles of the above authorities, prohibited from acting in that *double* character. It acquired neither a right to, nor a title in, the property purchased at such a sale. It holds the collateral note and deed of trust subject to the same conditions that existed before the sale. If the principal note has been paid or extinguished, the pledgee has no right to retain the property which was the subject of pledge.

V. The deed of trust by which the Wheeler note was secured having been fully paid and discharged; the Trust Company, with knowledge of that fact, having directed the Trustee to sell the property, and having itself become the purchaser at such sale, it purchased said property in its own wrong, and is not, therefore, entitled to be subrogated to the

rights of a junior mortgagee, who pays a prior mortgage to protect his own debt.

It is not denied that if the Trust Compaay had *purchased* the Meyer note, that it would have acquired the *lien* by which that note was secured; but it did not *purchase* the note; it paid it in full, and thereupon took a deed of release to itself from the trusteee for the property described in the trust deed to Wimer. If, therefore, the sale made under the Wheeler note and deed of trust was valid, and shall be confirmed, then the Trust Company will stand in the position of a junior mortgagee, who has paid and satisfied a mortgage prior to its own in order to protect its own title, and it will be entitled to all the rights of such a mortgagee; but if there was nothing legally due on the Wheeler note and deed of trust, and the sale made by Ward to the Trust Company shall be declared void for that or any other reason, then the company will have acquired no rights against the property involved in this contention. It will then stand in the position of a *voluntary* payor of the debt of a third person without that person's consent or request. In such a case equity will follow the law; and as at law there would exist no right of action in favor of the payor against the person whose debt was paid, so in equity there can be no right of subrogation upon such a payment, nor any right to retain the securities released by virtue thereof. The right of subrogation exists where there is a legal duty of the payor to pay on the happening of a certain contingency; or where the payment is made at the request of the debtor; or where the payment is made in order to protect rights which are imperiled by the existence of prior liens, as in the case of judgments and mortgages.

In the present case neither of these conditions exist. There was no legal duty on the part of the Trust Company to pay the debt of Meyer, there was no request made by

Bruff that the company should pay it. The company owned no valid junior mortgage or deed of trust which was in danger of being lost by a sale of the property under the deed of trust by which the payment of the Meyer note was secured. The company knew, and was bound to know that the satisfaction of the note of Holtzclaw & Bruff entirely extinguished any right it had ever acquired to retain or use the note of Mrs. Wheeler for any purpose; much less that it had a right to attempt the collection of that note by a foreclosure of a trust deed executed to secure its payment; but notwithstanding this knowledge, the company directs the trustee to sell, and becomes the purchaser. It was bound to know that such a sale, upon the facts which this record discloses, *was wholly void*. It could have acquired the rights of Meyer under the deed of trust, made to Wimer, either by becoming the purchaser at a sale under that deed of trust, or by purchasing the note from Meyer. Instead of doing this, the company *pays* and satisfies the note held by Myer without the knowledge or consent of Bruff. That payment discharged the trust. It did not keep it alive for the benefit of the company. The company paid and satisfied the Meyer note without right, *and in its now wrong*, and it cannot now enforce the trust by which the payment of that note was secured. The release of the trust by Wimer, to the company conveyed nothing to the company: it was only evidence that the Meyer note had been paid and satisfied, and the trust released and discharged. This result would not have followed if the company had either *purchased* the Meyer note, or, having a valid subsisting *second* trust, had paid and satisfied the *first*, in order to protect its security; or if the trustee had sold the property in accordance with the conditions of the trust deed, and the company had become the purchaser. The only rights the trust company acquired in respect to this property is under the Wheeler note and deed of trust, which it

held as *collateral security* for the payment of a principal debt, which, at the time of the pretended sale, under which it acquired its title, had been fully satisfied.

The Trust Company, in its argument filed herein, states its position upon this question of subrogation as follows:

"It is not believed that the doctrine of subrogation can have any application in this case, inasmuch as the complainant presents himself to an equity court, in a very questionable attitude; but if his equities were equal to those of the appellee, it is submitted that the appellee would, under the doctrine of equity jurisprudence applicable to a junior incumbrance, be subrogated to the rights of Meyer, whose prior mortgage was paid by the commissioners."

(See as to doctrine of subrogotion, 1 Ldg. Cases in Eq., 143, 4th ed.)

We have already conceded that if the Trust Company was the holder in good faith of a valid junior incumbrance, and had paid a prior incumbrance to protect its own security, the doctrine of subrogation in equity, would entitle them to be reimbursed to the amount paid to satisfy the first incumbrance. The case of the Ttrust Co. is not, as we have shown, such a case. It has none of the elements or incidents of such a case. It is *nothing* but the assertion of a pretension, which could never have had the slightest foundation but for the illegal and oppressive acts of the Trust Company in directing its Trustee to make sale of this property for the payment of a note which had been completely satisfied. The Trust Company is in no position to invoke in its behalf the doctrine of equitable subrogation upon the facts here disclosed.

It is suggested by the Trust Company also that inasmuch as Mrs. Wheeler has not appealed from the decree of the court below, the whole case made by the record is not here for examination. The case of the appellant, so far as the property in controversy is concerned, is the case

of Mrs. Wheeler. Her rights are his rights, so far as any lien upon the property resulting from her acts are concerned. The appellant has acquired whatever interest Mrs. Wheeler may have had in this property, and those rights are involved in this appeal. It is as clearly the the right of the appellant as it would be of Mrs. Wheeler to show that her note which the Trust Company held as collateral security had been satisfied; it is his right, as it was that of Mrs. Wheeler, to show that the debt due to Meyer had been paid and the deed of trust by which its payment was secured thereby released. These facts being shown in the record the appellant has the right to have the benefit of them.

It is submitted in conlusion, therefore, that for the reasons therein stated and the admitted facts upon which those reasons are based the decree of the court below should be reversed, and the sale made by Ward as trustee to the Trust Company should be set aside and declared void.

WM. A. MELOY,
JOHN J. WEED,
Counsel for Appellant.

IN THE

Supreme Court of the United States.

No. 1,084.—October Term, 1881.

MICHAEL McCORMICK, Appellant,

vs.

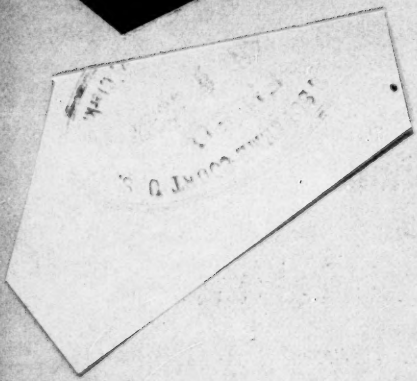
JOHN J. KNOX, Commissioner of the F. S. & Trust Company, et al.

BRIEF FOR APPELLEE.

ENOCH TOTTEN,

Counsel for Appellee.

J. L. Pearson, Printer, 9th and D sts., Washington.



IN THE

Supreme Court of the United States.

OCTOBER TERM, 1881.

MICHAEL MCCORMICK, APPELLANT,
vs.
JOHN J. KNOX, COM'R OF THE F. S. & TRUST COMPANY, ET AL.
No. 1,084.

BRIEF FOR APPELLEE.

This is an appeal from a decree of the Supreme Court of the District of Columbia, and the main question involved, briefly stated, is this:

There being three incumbrances (trust deeds) on a piece of real property in Washington, which were owned by three parties, and the holder of the second incumbrance caused a sale under his deed, and himself purchased, and then paid off the first incumbrance and took a release thereof, can the holder of the third incumbrance maintain a bill to redeem, by paying the second incumbrance only, and without paying the first also?

The pleadings and evidence authorize the following

STATEMENT OF FACTS.

On the 15th day of March, 1879, the plaintiff exhibited his bill in the Supreme Court of the District of Columbia, by which he sought the cancellation of a deed made by Ward, trustee, one of the defendants, to the Commission-

ers of the Freedman's Savings & Trust Company, in pursuance of a sale which he had previously made under the powers contained in a deed of trust to him, and, also, to obtain an account to enable him, as a junior incumbrancer, to redeem the property involved in the controversy. The Commissioners of the Trust Company, the trustee, Ward, and Mary J. Wheeler, from whom the plaintiff derived his title, were made parties.

The commissioners answered, and also filed a cross-bill, as did the defendant Wheeler. To these cross-bills answers were filed, and testimony was taken, which is found in the record.

The property in controversy is located on Pennsylvania avenue, southeast of the Capitol, and is of the value of six or seven thousand dollars.—(55.)

Prior to October 3d, 1871, the property was owned, in fee, by R. W. Bruff. Bruff was a member of the firm of Holtzclaw & Bruff, who were engaged in real estate speculations, building, &c., on Capitol Hill. On the 3d day of October, 1871, Bruff borrowed from one Myer the sum of $5,000, for which he gave his promissory note, payable in five years after date, to the order of Gen. Myer, with interest at ten per cent. per annum, and secured the payment of the note by a deed of trust on the property in question.—(69, 106, 115.)

The property conveyed to secure this note included the property now in controversy, and also a small part of the south twenty feet of lot four in the same square, which is not involved in this case. This portion of the property escaped from the controversy, because, on the 19th day of June, 1872, Bruff, to secure the payment of a bond to the Capitol Hill Building Association for about $2,000, made a deed of trust to Hilton and Dooley, conveying the whole of the south twenty feet of lot four. Default having been made in the payment of this debt to the Building Association, Hilton and Dooley advertised the property and sold it.—(108, 9, 14.)

This trust to Hilton and Dooley was prior to the trust-deed to Ward, under which the commissioners proceeded.

During the time the property was owned by Bruff, he, or he and his partner, improved it by building thereon a brick dwelling-house (94), and afterwards, and on the 29th of June, 1872, Bruff sold the property to one William T. Johnson (86, 90, 91), but conveyed it to the mother-in-law of Johnson, Mary J. Wheeler, one of the defendants in this case, who is now in unlawful possession of the property. This deed bears date on the 29th day of June, 1872, and was recorded on the 9th day of July, 1872.—(8, 14.) Mary J. Wheeler afterwards made her promissory note for the sum of $2,000, dated July 1, 1872, payable in one year after date to the order of Bruff, with interest at ten per cent. per annum, and secured by a deed of trust, bearing date on that day, to William H. Ward.—(111.) This deed of trust has given rise to the controversy in this cause. It was recorded on the 9th day of July, 1872, the same day on which the deed in fee from Bruff to Mrs. Wheeler was recorded. The two deeds probably constituted one transaction.—(8, 14, 111.) Immediately after this transaction, and on the 13th day of July, 1872 (105), Bruff and his partner, Holtzclaw, made their promissory note for the sum of $3,000, upon which they borrowed that sum from the Freedman's Savings and Trust Company.—(63, 64, 92.) To secure the payment of this note they gave the $2,000 note of July 1, 1872, made by Mary J. Wheeler, to the Freedman's Savings and Trust Company, together with some other collateral securities.—(63, 64, 92, 93, 94, 105.)

Default having been made in the payment of the Holtzclaw and Bruff note of $3,000, and also in the note made by Mary J. Wheeler for $2,000, the Commissioners of the Freedman's Savings and Trust Company directed the trustee, William H. Ward, to proceed to execute the trusts conferred upon him by the deed of trust of July 1, 1872, made by Mrs. Wheeler, as to all the property included in

the deed, except the portion of lot four.—(108.) He accordingly advertised the property and sold it to the commissioners, they being the highest bidders. Afterwards a deed of conveyance was made by Ward to the commissioners.—(109, 110.) The original bill prays that this deed may be cancelled.

The note for $5,000 held by Myer having become due, he insisted upon it that the amount should be paid, and threatened, if it should not be paid, to advertise the property and sell it under the trust deed.—(75, 76, 77, 69.)

The commissioners thereupon paid Myer the amount of the note, principal and interest, and took from the trustee, Wimer, a deed releasing all the property in lot one, which deed is found in the record.—(116.) The amount of money paid by the commissioners to Gen. Myer was $6,128.87. —(9, 71, 119.)

The sale was made by Ward on the 17th day of March, 1876, and the commissioners soon after that took possession of the property in controversy, and held possession of it and received the rents until some time prior to the 17th of March, 1879; the property being vacant and unoccupied, the key was given to Mrs. Burnett, a neighbor, who lived next door to the building, for the purpose of enabling persons who desired to rent the property to examine the same. On the 17th day of March, 1879, a young man presented himself to Mrs. Burnett and requested the key for the purpose of showing the house to a couple of ladies who desired, as he said, to rent it. One of these ladies was Mrs. Wheeler. The key was delivered to the young man, who proceeded to open the house, and Mrs. Wheeler entered, and from that time to this has forcibly held possession of the property.—(72, 73, 74.) The original bill was filed on the 15th of March, 1879, two days prior to this unlawful proceeding. The testimony seems to indicate that Mr. McCormick was a party to this fraud committed by Mrs. Wheeler upon the estate of the Freedman's Savings and Trust Company, although the

testimony is not very definite as to how far his actions extended. He went early in the morning to the house of Mrs. Burnett, and called for the key, but did not take it, but told Mr. Burnett that there would be a tenant in the house that morning.—(73.) The so-called "tenant" who went into the house that morning was Mary J. Wheeler, who obtained possession as before stated.

The claimant bases his claim to the relief demanded in his bill, upon the deed dated June 3, 1873, from Mrs. Wheeler to him.—(1, 52.) This deed was taken by him nearly a year after the last of the two incumbrances was on the record; although absolute on its face, his deed was in reality only a security for a pre-existing debt.—(2, 53.) And at the time he took the deed he knew that the property was incumbered by the five thousand dollar trust to Wimer, and he was told of the incumbrance held by the trust company.—(52.) It is immaterial, however, what his specific information may have been, because both of the trust deeds mentioned had been duly recorded. The trust deed to Wimer bears date October 3, 1871, and was recorded October 7, 1871 (106); the trust deed to Ward bears date July 1st, 1872, and was recorded July 9, 1872. The plaintiff in his testimony declares that he "understood from Mrs. Wheeler" that the incumbrance held by the trust company did not "appear against the property." —(52.)

The Freedman's Savings and Trust Company became insolvent, and three commissioners, who were originally defendants in this cause, were appointed under the act of Congress to take charge of the assets of the insolvent corporation, which they did, on or about the 12th day of July, 1874.—(69.)

The present appellee, Knox, was by law, (act of February 21, 1881,) and also by an order of the court (38), substituted for the three original commissioners.

Upon this state of facts the court, at special term, passed a decree (30) giving to the complainant, and to the de-

fendant Wheeler, the right to redeem the property by paying the amount actually due to the trust company and secured by the liens upon the property, including the Wimer trust, which had been paid by the commissioners and discharged, and directing an account to be taken to that end. From this decree an appeal was taken to the general term, where the decree was affirmed.—(35.) The complainant in the original bill has appealed to this court from that decree. Mrs. Wheeler did not appeal, and hence much of the mass of matter in the record has become unimportant.

Argument.

It will probably not escape the observation of the court that the real object of the complainant and Mrs. Wheeler is to secure the benefit of the payment made by the commissioners of the trust company to Myer, by which they secured the release of the property in controversy from the lien created by the trust deed to Wimer. According to the account stated by the auditor, and reported to the court in pursuance of the decree of the special term (31, 32), the whole amount to be paid on redemption by the appellant, including the Myer debt, is about $8,000.00; excluding the Myer debt, which alone amounts to $7,163.-33, the balance to be paid would be less than one thousand dollars. The property being worth between six and seven thousand dollars, the thrifty disposition of the parties is apparent.

The testimony wholly fails to sustain the allegations of the original bill against the validity of the sale. In fact very little effort was made by the complainant to impeach the sale; and the testimony adduced by the commissioners shows that the sale was fairly and properly conducted, and a good price was secured (see *Clark vs. Trust Co.*, 100 *U. S.*, 149); the truth is that too much money was bidden by the commissioners, and they would have been glad to escape from the purchase, and the appellee is now ready

and willing to take the money due the trust company and give up the property. But the questions relating to the sale, and the privilege of redeeming, although apparently made, are not the matters really in dispute; the real question, as before intimated, is whether or not the complainant shall be allowed to redeem the property without paying the prior incumbrances upon it; whether *he* shall get the benefit of the $6,128.87, paid by the commissioners to Myer, or whether the *creditors of the insolvent trust company* shall get it.

It is not believed that the doctrine of subrogation can have any application to this case, inasmuch as the complainant presents himself to an equity court, in a very questionable attitude; but if his equities were equal to those of the appellee, it is submitted that the appellee would, under the doctrine of equity jurisprudence applicable to a junior incumbrance, be subrogated to the rights of Myer, whose prior mortgage was paid by the commissioners.—(See, as to doctrine of subrogation, 1 Ldg. Cases in Eq., 143, 4th ed.)

It is, therefore, submitted that the decree of the Supreme Court of the District of Columbia should be affirmed.

ENOCH TOTTEN,
Counsel for Appellee.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 1034.

WILSON AGER AND ELISHA C. AGER, APPELLANTS,

vs.

TALBOT C. MURRAY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED OCTOBER 13, 1881.

SUPREME COURT OF THE UNITED STATES.

No. 1034.

WILSON AGER AND ELISHA C. AGER, APPELLANTS,

vs.

TALBOT C. MURRAY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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1 *Bill of complaint.—Filed Dec.* 5, 1878.

In the supreme court of the District of Columbia. In equity.

TALBOT C. MURRAY,
vs.
WILSON AGER & ELISHA C. AGER. } No. 6545. Doc. 19.

To the honorable the justice' of said court holding a special term in equity:

The plaintiff states as follows:

1. He is a citizen of the District of Columbia and brings this suit in his own right.

2. The defendants are citizens of said District and are sued in their own right.

3. That heretofore, to wit, April 10th, 1876, the plaintiff recovered judgment in the law branch of this court against the defendant Wilson Ager, for the sum of $2,164.66, with interest on $1,082.33 thereof from April 11th, 1872, and on $1,082.33, from June 11th, 1872, and the
2 further sum of $4.60 paid notary for protests, besides $32.40 for his costs; that a writ of fieri facias has beenduly issued upon said judgment and directed to the U. S. marshal for said district, who, December 4th, 1878, returned the same endorsed nulla bona, as will more fully appear from a "short copy" of said judgment hereto appended, and marked Exhibit A.

4. And the plaintiff further avers that the defendant Wilson Ager has no real or personal property in said District, subject to execution at law, but that he is the patentee and owner of certain patents, to wit, of reissued letters patent of the United States, numbered 4451 (division A), and 4452 (division B), for improvements in machines and processes for decorticating grain, which, if sold, would realize more money than is required to satisfy said judgment. The nature of the inventions secured by said letters patent is fully explained in printed copies
3 of the specifications forming part of said patents herewith filed, marked Exhibits B & C respectively.

5. And the plaintiff further says that the said Wilson Ager, on or about the 26th day of September, 1876, assigned said patents, describing them as reissued letters patent Nos. 3788 & 3789, to his son Elisha C. Ager, who, October 8, 1877, reassigned the same to his father (designating the said patents by the above numbers), and also an interest (the extent of which is not given) in certain other patents, to wit, letters patent of the United States, No. 133898 of 1872, and No. 137495 of 1873 (to George T. Smith), for improvement in machines for dressing flour and middlings purifiers, as appears from a paper writing filed in equity cause No. 5480, doc. of this court, the same being a suit between the said Wilson Ager, pl'ff, and Alfred G. Hall et al., def'ts, respecting said patents, 4451 & 4452. A certified copy of said last-mentioned assignment is filed herewith, marked Exhibit D. Said last-mentioned assignment has not, as the plaintiff is informed and
4 believes, been placed upon record in the Patent Office, and is withheld from record by the said Wilson Ager with a view to mislead and defraud his creditors by making it apparent that he is not the owner of said patents. And the plaintiff further says the assignment of said patents by said Wilson Ager to the said Elisha C. Ager

was, as the plaintiff is informed and believes, a scheme on the part of said Wilson Ager to cheat and defraud his creditors, which was well known to the said Elisha C. Ager when he accepted said assignment, and that in point of fact the said Elisha C. Ager accounts and pays over to said Wilson Ager all moneys he received in respect of said patents.

6. And the plaintiff further says that, owing to the peculiar nature of the defendant Wilson Ager's property in said patents, he is advised by counsel that the same is not the subject of seizure and sale on execution at law, but that this court, by means of a creditor's bill,
5 will take hold of said patents and apply the same to the payment of his debts.

And the plaintiff, who now insists that said patents are the property of said Wilson Ager, and that they may be sold, and the proceeds applied to the payments of said judgment, prays:

1. That the defendants may be required to answer the premises.

2. That, pending this suit, the defendants, their agents and attorneys, may be restrained and enjoined from further assigning or in anywise interfering with said patents, or either of them.

3. That said patents may be sold under the direction of this court and the proceeds of sale applied to the payment of said judgment, and that the defendant may be required to execute such assignments thereof as may be necessary to vest title in the purchaser or purchasers, in conformity with the patent laws; or for such other and further re-
6 lief as the nature of the case may require.

4. And may it please your honors to grant unto the plaintiff the U. S. writ of subpœna, to be directed to the defendant, commanding him, &c.

HINE & THOMAS,
Compl'ts' Sol'rs.

DISTRICT OF COLUMBIA,
City of Washington, ss:

I, Talbot C. Murray, on oath, say: I have read the foregoing bill by me subscribed, and know the contents thereof, and that the facts therein stated of my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

T. C. MURRAY.

Sworn to and subscribed before me this 5th day of December, 1878.

R. J. MEIGS, *Clk.*
By R. J. MEIGS, JR., *Ass't.*

7 EXHIBIT A.—*Filed Dec.* 5, 1878.

Short copy Ex. A.

Clerk's office, supreme court of the District of Columbia.

TALBOT C. MURRAY *vs.* WILSON AGER ET AL. } No. 12489, docket.

1876, April 10.—Judgment on verdict vs. def't Wilson Ager for $2,164.66. Interest on $1,082.33 from April 11, '72, & on $1,082.33 from June 11, '72. Cost of protest, 4.60. Costs of suit, $32.40.

1878, Dec. 4.—Execution returned "nulla bona."

Test. R. J. MEIGS, *Clerk,*
By J. R. YOUNG, *Ass't Clerk.*

NOV. 30, 1878.

8 EXHIBIT B.—*Filed Dec. 5, 1878.*

UNITED STATES PATENT OFFICE.

Specifications & reissued letters pat. 4451.

Wilson Ager, of Washington, District of Columbia. Improvement in processes for decorticating grain.

Specification forming part of letters patent No. 92556, dated July 13, 1869; reissue No. 3788, dated January 11, 1870; reissue No. 4451, dated July 4, 1871. Division A.

To all whom it may concern:

Be it known that I, Wilson Ager, of Washington, in the District of Columbia, have invented certain new and useful improvements in the art of decorticating grain, and I do hereby declare that the following is a full, clear, and exact description of the same:

My improvement in the process of decorticating grain consists in repeatedly abrading the surface of the grain and cooling it in alternate succession.

In carrying out my invention I prefer to use the machine figured in the drawing hereto annexed, which is the subject of another application of even date herewith, to which reference is made for a more full and complete description of said machine.

Figure 1 is a side elevation of the machine. Fig. 2 is a longitudinal section of the same. Fig. 3 is a detached view of the screen, showing the discharge-openings and slides; and Fig. 4 is an end view of the machine.

The same letters are employed in all the figures in the designation of identical parts.

In the annexed drawing A indicates a frame, upon which is placed a horizontal shaft, B, carrying two stones, C, and provided with two pulleys, D and E, or two gear-wheels. Upon this shaft is the screen F, having journals separate from those of the stones and main shaft, and a pulley or gear-wheel, G. Power is applied to the pulley or gear-wheel D, setting in motion the shaft A, stones C, and pulley or gear-wheel E, say about one hundred and fifty revolutions per minute. By means of the bands H and I, and the pulleys or gear-wheels K, L, and M, a slower motion is transmitted to the screen—say about thirty revolutions to the minute—or the screen may be revolved in the direction opposite to the stones, if desired. The grain is fed in through the tube M, as indicated by the arrow *m*. The grain spreads through the machine and is raised by elevators O. A constant blast of air is brought into the machine, as indicated by the arrow *n*, or in any other suitable manner, to blow out of the machine all the separated pellicle and dust as soon as they are detached from the kernels, and at the same time to cool the grain separated by the elevators, so as to be subject to the action of the blast or current of air. When the decortication is completed the grain is discharged through openings P, Fig. 3, provided with adjustable slides R.

It will be seen that the grain fed into the machine lies against the sides and peripheries of the stones with a pressure due only to its weight.

It will also be seen that the grain is repeatedly carried away from the abrading action of the stones, and is dropped into the space

was, as the plaintiff is informed and believes, a scheme on the part of said Wilson Ager to cheat and defraud his creditors, which was well known to the said Elisha C. Ager when he accepted said assignment, and that in point of fact the said Elisha C. Ager accounts and pays over to said Wilson Ager all moneys he received in respect of said patents.

6. And the plaintiff further says that, owing to the peculiar nature of the defendant Wilson Ager's property in said patents, he is advised by counsel that the same is not the subject of seizure and sale on execution at law, but that this court, by means of a creditor's bill,
5 will take hold of said patents and apply the same to the payment of his debts.

And the plaintiff, who now insists that said patents are the property of said Wilson Ager, and that they may be sold, and the proceeds applied to the payments of said judgment, prays:

1. That the defendants may be required to answer the premises.

2. That, pending this suit, the defendants, their agents and attorneys, may be restrained and enjoined from further assigning or in anywise interfering with said patents, or either of them.

3. That said patents may be sold under the direction of this court and the proceeds of sale applied to the payment of said judgment, and that the defendant may be required to execute such assignments thereof as may be necessary to vest title in the purchaser or purchasers, in conformity with the patent laws; or for such other and further re-
6 lief as the nature of the case may require.

4. And may it please your honors to grant unto the plaintiff the U. S. writ of subpœna, to be directed to the defendant, commanding him, &c.

HINE & THOMAS,
Compl'ts' Sol'rs.

DISTRICT OF COLUMBIA,
City of Washington, ss:

I, Talbot C. Murray, on oath, say: I have read the foregoing bill by me subscribed, and know the contents thereof, and that the facts therein stated of my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

T. C. MURRAY.

Sworn to and subscribed before me this 5th day of December, 1878.

R. J. MEIGS, *Clk.*
By R. J. MEIGS, JR., *Ass't.*

7 EXHIBIT A.—*Filed Dec.* 5, 1878.

Short copy Ex. A.

Clerk's office, supreme court of the District of Columbia.

TALBOT C. MURRAY
vs.
WILSON AGER ET AL. } No. 12489, docket.

1876, April 10.—Judgment on verdict vs. def't Wilson Ager for $2,164.66. Interest on $1,082.33 from April 11, '72, & on $1,082.33 from June 11, '72. Cost of protest, 4.60. Costs of suit, $32.40.

1878, Dec. 4.—Execution returned "nulla bona."

Test.

R. J. MEIGS, *Clerk,*
By J. R. YOUNG, *Ass't Clerk.*

NOV. 30, 1878.

EXHIBIT B.—*Filed Dec.* 5, 1878.

UNITED STATES PATENT OFFICE.

Specifications & reissued letters pat. 4451.

Wilson Ager, of Washington, District of Columbia. Improvement in processes for decorticating grain.

Specification forming part of letters patent No. 92556, dated July 13, 1869; reissue No. 3788, dated January 11, 1870; reissue No. 4451, dated July 4, 1871. Division A.

To all whom it may concern:

Be it known that I, Wilson Ager, of Washington, in the District of Columbia, have invented certain new and useful improvements in the art of decorticating grain, and I do hereby declare that the following is a full, clear, and exact description of the same:

My improvement in the process of decorticating grain consists in repeatedly abrading the surface of the grain and cooling it in alternate succession.

In carrying out my invention I prefer to use the machine figured in the drawing hereto annexed, which is the subject of another application of even date herewith, to which reference is made for a more full and complete description of said machine.

Figure 1 is a side elevation of the machine. Fig. 2 is a longitudinal section of the same. Fig. 3 is a detached view of the screen, showing the discharge-openings and slides; and Fig. 4 is an end view of the machine.

The same letters are employed in all the figures in the designation of identical parts.

In the annexed drawing A indicates a frame, upon which is placed a horizontal shaft, B, carrying two stones, C, and provided with two pulleys, D and E, or two gear-wheels. Upon this shaft is the screen F, having journals separate from those of the stones and main shaft, and a pulley or gear-wheel, G. Power is applied to the pulley or gear-wheel D, setting in motion the shaft A, stones C, and pulley or gear-wheel E, say about one hundred and fifty revolutions per minute. By means of the bands H and I, and the pulleys or gear-wheels K, L, and M, a slower motion is transmitted to the screen—say about thirty revolutions to the minute—or the screen may be revolved in the direction opposite to the stones, if desired. The grain is fed in through the tube M, as indicated by the arrow *m*. The grain spreads through the machine and is raised by elevators O. A constant blast of air is brought into the machine, as indicated by the arrow *n*, or in any other suitable manner, to blow out of the machine all the separated pellicle and dust as soon as they are detached from the kernels, and at the same time to cool the grain separated by the elevators, so as to be subject to the action of the blast or current of air. When the decortication is completed the grain is discharged through openings P, Fig. 3, provided with adjustable slides R.

It will be seen that the grain fed into the machine lies against the sides and peripheries of the stones with a pressure due only to its weight.

It will also be seen that the grain is repeatedly carried away from the abrading action of the stones, and is dropped into the space

through which the current of air is passing, so that the grain is
11 cooled by air passing through or around it as it drops, to be again acted upon by the stones.

I do not claim herein the machine, or any part of it, having made claim to my improvements in said machine in another application of even date herewith. Neither do I wish to limit the carrying out of this invention by means of the machines described herein, but propose to use any convenient means for carrying out my improvements in the art of decorticating grain, herein described.

What I claim as my invention, and desire to secure by letters patent, is—

The improved process of decorticatng grain by repeatedly abrading the surface of the grain and cooling it in alternate succession, substantially in the manner as hereinbefore set forth.

In testimony whereof I have signed my name to this specification before two subscribing witnesses.

WILSON AGER.

Witnesses:
R. MASON.
DANIEL BREED.

12 EXHIBIT C.—*Specification and letters pat.* 4452.—*Filed Dec.* 5, 1878.

UNITED STATES PATENT OFFICE.

Wilson Ager, of Washington, District of Columbia. Improvement in machines for decorticating grain.

Specification forming part of letters patent No. 92556, dated July 13, 1869; reissue No. 3789, dated January 11, 1870; reissue No. 4452, dated July 4, 1871. Division B.

To all whom it may concern:

Be it known that I, Wilson Ager, of Washington, in the District of Columbia, have invented a new and useful improved machine for decorticating grain; and I do hereby declare that the following is a full, clear, and exact description of the same, reference being had to the annexed drawing making part of this specification, in which—

Figure I is a side elevation of the machine. Fig. II is a vertical longitudinal section thereof. Fig. III is an end elevation of the revolving screen with a portion broken away to show the elevators. Fig. IV is an end elevation of the machine.

13 The same letters are employed in all the figures in the designation of identical parts.

My invention relates to a machine for decorticating grain. Machines of this class differ from smut-machines and other grain-cleaning machines in this, that the latter, by a system of beaters, or other agitators, screens, and winnowers, are intended to rub off substances adhering to the pellicle, and to separate the grain from foreign substances mingled with it. All such machines are designed merely to clean the grain, and thus prepare it for use. The office of a decorticating machine is to separate a portion of the grain itself, viz, the pellicle from the kernel. It has been proposed to accomplish this result by the aid of chemical agencies acting upon the pellicle, and also

by machines which, by the abrading action of stones, emery, or roughened metallic surfaces, as well as the friction of the grains upon one another, are designed to scour or grind off the pellicle. The stones used in decorticating machines for removing the pellicle
14 by abrasion have plane surfaces, and are not cut or channeled, as in millstones for grinding grain. Prior to my invention machines consisting of a revolving stone, or a series of revolving stones, arranged so as to wallow in the grain contained in a screen, have been used for the purpose of decorticating grain. (In using the word "wallow" and its derivatives in this and other parts of this specification the meaning is intended to be limited to the description of the action of stones carried upon a horizontal or nearly horizontal shaft, and revolving through a mass of grain carried in a grain-holder extended below the stones, so that the grain shall bear against the side-faces as well as the periphery of the stone.) But machines of the kind mentioned could only be operated for a short time by reason of the friction which caused the grain to gather into cakes or lumps and the stones to gum up and to become smooth. In no prior decorticating machine has
15 there been any means for lifting up the grain so as to facilitate a free circulation of a current of air forced through the grain, for the purpose of cooling it and winnowing it, and repeatedly renewing its contact with the stone or other abrading surface used. Millstones similar to those used for grinding grain, and other stones carried upon a vertical shaft, have been described in connection with currents of air for cooling the grain and surfaces for decorticating the grain; but such stones would pass the grain too rapidly through them by their centrifugal action, and do not properly decorticate the grain, as in the case of a wallowing stone, with which the same grains are brought repeatedly into contact. I believe myself to be the first person who ever combined a revolving stone, or stone arranged to wallow in grain carried in a revolving screen, with means for producing a current of air forced into the screen and through the mass of grain carried therein; and further, that no one before me ever com
16 bined with said stones, screens, and means for producing a current of air, elevators for carrying up the grain and discharging it on or between the stones, and opening the grain for the free circulation of currents of air among the grains; therefore I do not wish such of the claims of the statement of invention as refer broadly to means of producing and directing currents of air into the machine limited to the forms of the means described; neither do I wish to be limited to elevators attached to the screen, although, for convenience of construction, I prefer this means of operating the elevators.

My invention consists:

1st. In combining with a revolving stone or stones arranged to wallow in the grain, a revolving screen and mechanism for producing and forcing a current of air into said screen and through the mass of grain, for the purpose of cooling the grain and the abrading surfaces of the machine.

17 2d. In combining with a stone or stones a grain holder a series of elevators, and means for producing and directing a blast or current of air into and through the machine, whereby the grain is repeatedly and alternately abraded and cooled during the operation of the machine, the grain being loosened and distributed by the elevators so as to permit the air to pass readily through to cool it and the abrading surfaces of the machine.

3d. In combining with a revolving stone or stones, arranged to wal-

low in the grain, and a grain-holding screen, an air pipe arranged to direct a blast or current of air into the screen through the end thereof, substantially as described.

4th. In combining with a revolving stone or stones, arranged to wallow in the grain, and a grain-holding screen, an air pipe or conduit, arranged to direct a blast or current of air against and through the periphery of the screen from outside thereof, for the purpose of cooling the grain and machine.

5th. In combining with a revolving stone or stones, arranged to wallow in the grain, and a revolving screen, a grain pipe or spout, arranged to feed the grain into one end of the screen, and an air pipe or conduit arranged to direct a blast or current of air into the opposite end of the screen, whereby the air is directed toward and against the grain passing through the machine in an opposite direction.

6th. In giving a further and more perfect direction to the blast of air entering the screen at the end by making the head and a portion of the periphery of the screen of impervious material.

7th. In combining with a revolving stone or stones, arranged to wallow in the grain, and a rotating screen, a series of adjustable discharge-apertures in the head of the screen, whereby the depth of the bed of grain in the machine may be regulated and the passage of the grain through the machine hastened or retarded, as desired.

8th. In combining with a revolving stone or stones, arranged to wallow in the grain, and a rotating screen provided with a series of discharge-apertures in the discharge-head, a grain-feeding pipe, which admits of a constant supply of grain into the machine, the combination being such as to admit of a constant supply and discharge of grain through the machine, equalizing the action of the stones upon the grain passing through the machine.

In the annexed drawing, which represents a machine embodying my invention, A indicates the frame.

Upon the frame is placed a horizontal shaft B, carrying two stones C, attached to said shaft at a suitable distance apart from each other, the shaft being provided with two pulleys, D and E, or preferably, two gear-wheels. Upon the same shaft B, is a screen, F, having separate journals from those of the main shaft, and a pulley or gear-wheel, G. Power is applied to the pulley or gear-wheel *e*, thus setting the shaft B, stones C, and pulley or gear-wheel D in motion, say about one hundred and eighty revolutions per minute. By means of the bands H and I, and the pulleys or gear-wheels D, K, L, and G, a slower motion is transmitted to the screen, say about thirty revolutions to the minute, or the screen may be revolved in the opposite direction to the stones if desired. The grain is fed into the machine through the tube M, and hollow shaft of the screen, as indicated by the arrow *m*; then the grain spreads over and between the stones C, being subjected to the action of their grinding-surfaces, which take off the pellicle. At the same time the elevators O, which for convenience of construction I have attached to the screen, carry the grain from the lower part of the screen beneath the stones to above the stones, and scatter it over and between them, thus repeatedly renewing the action of the stones upon the grain, and presenting different parts of the kernels to the action of the surfaces of the stone, meanwhile exposing the grain and particles ground off in more scattered condition to the action of the blast. A constant blast of air is brought into the machine, as indicated by the arrow *n*, through the pipe N, and also through a suitable conduit directed against the ex-

terior of the screen, as shown at X, Fig. 1, or any other suitable manner, to cool the working surfaces, and to blow out of the machine the separated pellicle and dust detached from the kernels. Fans and other means of generating blasts or currents of air passing through screens of a similar character, for other purposes, being well known, I have not considered it necessary to particularly describe them.

22 I prefer to introduce a great part of the blast of air into the machine through the pipe N, and the hollow shaft of the screen at the opposite end from that at which the grain enters, because it is preferable in many kinds of grain to keep away the impurities from the discharge end of the screen; and, to give a proper direction to the blast of air passing in through the pipe N, and hollow shaft of the screen, I have covered the discharge end of the periphery of the screen with an impervious covering, Y, of sheet metal or other suitable material, so as to direct the current of air horizontally in the screen against the grain, above and around the stones.

For the same purpose, the head of the rolling screen through which the current of air is introduced, shown in Fig. 3, is made solid or of an impervious material, while the opposite end, through which the current of air passes from the machine, shown in Fig. 4, is perforated, to permit the free escape of the current of air and fine substances carried with it.

23 Letters P represent the discharge-apertures in the discharge end or head of the screen, provided with adjustable slides, R, by means of which the grain is caused to be discharged nearer to or at a greater distance from the shaft B, whereby the passage of the grain through the machine is accelerated or retarded, and, at the same time, a proper bed of grain for the action of the stones is maintained in the screen.

It will be seen that, by reason of the peculiarities of my improved machine, the grain does not require to be wet, as mentioned in the description of other former machines, which is a great advantage, as by such wetting, and the consequently required drying, the expense of separation is increased, and the quality of the grain is liable to be injuriously affected.

I do not limit my invention to the precise form of the mechanism above described, and I propose to use any number of stones that may be advantageous, according to the kind of grain to be cleaned; neither do I limit my invention to the use of a stone or stones revolving in a precisely vertical plane; but I wish to be understood that in

24 using the term rotating "vertically" in the following claims I wish also to include and cover stones revolving in planes slightly inclined from the vertical, but not sufficiently so as to depart from the principal of operation of my machine.

What I claim as my improvement in machines for decorticating grain, and desire to secure by letters patent, is—

1. In combination with a revolving stone or stones, arranged to rotate vertically, or nearly vertically, in a bed of grain, a revolving screen and mechanism for producing and forcing a current of air into said screen and through the mass of grain, for the purpose of cooling the grain and the abrading surfaces of the machine, substantially as set forth.

2. In combination with a revolving stone or stones, a grain-holder, a series of elevators, and means for producing and directing a blast or current of air into and through the machine, whereby the grain is repeatedly and alternately abraded and cooled, substantially as set forth.

3. In combination with a revolving stone or stones, arranged
25 to rotate vertically in a bed of grain, and a grain-holding screen, an air-pipe arranged to direct a blast or current of air into the screen through the end thereof, substantially as set forth.

4. In combination with a revolving stone or stones arranged to rotate vertically in a bed of grain, and a grain-holding screen, an air-pipe arranged to direct an induced blast or current of air against and through the periphery of the machine from outside thereof, substantially as set forth.

5. In combination with a revolving stone or stones arranged to rotate vertically in a bed of grain, and a revolving screen, a grain pipe or spout arranged to feed the grain into one end of the screen, and an air-pipe arranged to direct a blast or current of air into the opposite end of the screen, substantially as and for the purpose described.

6. In combination with a revolving stone or stones arranged to rotate vertically in a bed of grain, a screen constructed with an
26 impervious head and impervious portion of the periphery contiguous thereto, arranged in such relation to the air-induction pipe opening through said head that direction shall be given to the blast or current of air, substantially in the manner set forth.

7. In combination with a revolving stone or stones arranged to rotate vertically in a bed of grain, and a revolving screen, a series of adjustable discharge-apertures in a head of the screen, whereby the depth of the bed of grain may be regulated, and the passage of the grain through the machine accelerated or retarded, substantially as set forth.

8. In combination with a revolving stone or stones arranged to rotate vertically in a bed of grain, and a rotating screen provided with a series of adjustable discharge-apertures, a grain-feeding pipe which admits of a constant supply of grain into the machine, substantially as and for the purpose set forth.

In testimony whereof I have signed my name to this specifica-
27 tion before two subscribing witnesses.

WILSON AGER.

Witnesses:
R. MASON,
DANIEL BREED.

28 EXHIBIT D.—*Filed Dec.* 5, 1878.

Whereas I, E. C. Ager, of the city of Washington, D. C., am the owner of certain new and useful inventions and improvements for cleaning grain, rice, and other cereals, as secured to Wilson Ager by reissued letters patent of the United States, bearing date July 4th, 1871, and numbered respectively No. 3788 and 3789; and whereas I am also the owner of certain interests for new and useful improvements denominated flour-dresses, or middlings-purifiers, as secured to George T. Smith by letters patent of the United States, No. 133898, dated December 10th, 1872, and No. 137495, to George T. Smith, dated April 1st, 1873, the same being secured to Wilson Ager by deeds and agreements, bearing date severally September 16th, 1872, December 18th, 1872, and January 18th, 1873; also certain interests into and for middlings-purifiers, as secured to Benjamin Barter, of Faribault, Minnesota, by letters patent of the United States, bearing date April 9th, 1872, and numbered
29 125518, the same being secured to Wilson Ager by deed and agreement, bearing date October 5th, 1872; also certain interests in the George T. Smith patents, assigned to Otis A. Pray, of Minneapolis, Minnesota, June 5th, 1872, and deeded to Wilson Ager January

18th, 1873; all of which are recorded and all of which were assigned to me September 26th, 1865, by Wilson Ager, and were recorded September 27th, 1876, in liber X[20], page 295, of transfers of patents; and whereas Wilson Ager, of the city of Washington, District of Columbia, is desirous of purchasing the aforesaid patented interests:

Now, therefore, for one dollar and other valuable consideration, to me in hand paid by the said Wilson Ager, I hereby sell, assign, transfer, and set over to the said Wilson Ager all my right, title, property, possession, claim, and demand whatsoever acquired under and by virtue of said patents, deeds, agreements, or assignments to me, or which has in anywise enured to me, or become mine in connection therewith in the United States, or any part thereof not heretofore sold, contracted for, and of record to other parties.

As witness my hand and seal at the city of Washington, D. C., this the eighth day of October, A. D. 1877.

E. C. AGER. [SEAL.]

Witnesses:
MINTIE E. AGER,
F. R. THORNTON.

DISTRICT OF COLUMBIA,
County of Washington:

On this 8th day of October, A. D. 1877, before me, a notary public in and for the county and District aforesaid, personally came E. C. Ager, to me well known, and who acknowledged the foregoing assignment to be his free act and deed.

Given under my hand and notarial seal this 8th day of October, A. D. 1877, at Washington City, D. C.

[SEAL.] JAMES MICH'L CALLAN,
Notary Public.

A true copy.

R. J. MEIGS, *Clerk.*

Test:

By M. A. CLANCY,
Asst. Clerk.

Subpœna.

In the supreme court of the District of Columbia, the 5th day of December, 1878.

Subpœna to answer.

TALBOT C. MURRAY, COMPLAINANT,
against
WILSON AGER, DEFENDANT. } No. 6545. Eq'y dock. 19.

The President of the United States to Wilson Ager, defendant:

You are hereby commanded to appear in this court, at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the bill this day filed, and entitled as above, under pain of attachment, and such other process of contempt as the court shall award.

Witness:

D. K. CARTTER,
Chief Justice.

[SEAL.] R. J. MEIGS, *Clerk.*
By R. J. MEIGS, JR.,
Asst. Clerk.

MEMORANDUM—That the defendant herewith served is to enter his appearance in this suit in the clerk's office on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

32 *Marshal's return.*

Summoned def't Dec'r 6th, 1878.

F. DOUGLASS, *Marshal.*

33 *Stipulation of counsel.—Filed Feb.* 4, 1879.

In the supreme court of District of Columbia.

TALBOT C. MURRAY
vs.
WILSON AGER & ELISHA C. AGER. } Equity dock. 19. No. 6545.

It is hereby stipulated that the defendant Wilson Ager shall have until the rule-day in March to demur, plead, and answer in the above-entitled cause, and that the absent defendant Elisha C. Ager shall have until the rule-day in April, provided his appearance is entered in this suit this day, and not otherwise.

February 4, 1879.

L. G. HINE,
Sol'r for Compl't.

34 *Demur'er and plea to the bill of complaint.—Filed Mar.* 4, 1878.

In the supreme court of the District of Columbia.

TALBOT C. MURRAY
vs.
WILSON AGER & ELISHA C. AGER. } Equity doc. 19. No. 6545.

These defendants, by protestation, not confessing any of the matters and things contained in the bill of complaint as therein alleged, say that they are advised by counsel that said bill of complaint is insufficient, and to which, by the rules of this honorable court, these defendants ought not to be required to make or give answer; and for cause of demur'er these defendants show:

1. That it appears from said bill that the same is not signed by counsel or by the complainant, as by the rules of this court bills in equity are required to be.

2. That Elisha C. Ager is a non-resident and without interest in this suit, and therefore improperly made a party thereto.

35 3. That the 3rd paragraph of said bill is uncertain, in this, that it does not state to which of the three defendants to said judgment or to which of the two defendants to said bill it relates.

4. That the fourth paragraph of said bill is uncertain, because it does not show which of the three defendants to said judgment or which of the two defendants to said bill has no property, real or personal, in the District of Columbia.

5. That the records of the Patent Office show that sundry persons beside Wilson Ager and Elisha C. Ager are interested in the patents prayed to be subjected to seizure and sale under a decree of this court to pay said judgment, and are therefore proper parties to this suit, if said defendants are, but are not made parties thereto, as shown by said bill.

Plea to the relief prayed for in the bill.

That the patent rights set out in said bill and prayed to be
36 sold under a decree of this court to pay said judgment at law, are not located in the District of Columbia, and are not, therefore, within the jurisdiction of this court for the purposes of said bill, and that therefore this court cannot grant the relief prayed for.

Wherefore these defendants ask the judgment of this honorable court whether they shall be compelled to make further and other answer to said bill, or to any of the matters and things therein contained, and pray that they may be hence dismissed with their reasonable costs in this behalf sustained.

March 4, 1879.

WARRICK MARTIN,
Solicitor for Defendants.

I hereby certify that, in my opinion, the grounds of demur'er stated herein are well founded in point of law, and that the plea herein is true in point of fact.

March 4, 1879.

WARRICK MARTIN.

Comes said Wilson Ager, & being duly sworn, deposes & says that said plea is true in fact.

WILSON AGER.

Subscribed & sworn to before me Dec. 5th, 1879.
R. J. MEIGS, *Clerk.*
By M. A. CLANCY, *Ass't Clerk.*

37 *Affidavit of Wilson Ager in support of demur'er and plea.—Filed Mar. 4, 1879.*

In the supreme court of the District of Columbia.

TALBOT C. MURRAY.
vs.
WILSON AGER & ELISHA C. AGER. } Equity doc. 19, No. 6545.

Wilson Ager, being first duly sworn, on oath deposes and says that the demur'er and plea prepared by his counsel in this case has been read to him, and he knows the contents thereof, and that the same are not interposed for delay.

WILSON AGER.

Subscribed & sworn to before me March 4, 1879.
R. J. MEIGS, *Clerk.*
By M. A. CLANCY, *Ass't Clerk.*

38 *Affidavit of Wilson Ager as to non-residence.—Filed Mar. 4, 1879.*

In the supreme court of the District of Columbia. In equity.

TALBOT C. MURRAY
vs.
WILSON AGER & ELISHA C. AGER. } Equity doc. 19, No. 6545.

CITY OF WASHINGTON,
County of Washington, ss:

Wilson Ager, of said city Washington, being first duly sworn, on

oath deposes and says that Elisha C. Ager is his son; that said Elisha C. Ager has not resided in the District of Columbia for fourteen months last past; that in October, 1877, said Elisha C. Ager left Washington City and went to California to engage there in business; that since his arrival in California he has been engaged in business there; that in the month of February, 1878, the family said Elisha C. Ager left Washington City to join him in California, and that since their arrival in said State, early in March, 1873, said Ager and his family have
39 resided in San Francisco in said State, and they still so reside.

WILSON AGER.

Sworn to and subscribed before me this 4th day of March, 1879.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk*.

40 *Motion to dismiss bill of complaint.—Filed Apr. 9, 1879.*

In the supreme court of the District of Columbia.

TALBOT C. MURRAY
vs.
WILSON AGER AND ELISHA C. AGER. } Equity doc. 19, No. 6545.

On Saturday, the 12th of April, 1879, at the opening of court, or as soon thereafter as counsel can be heard, the defendants, through their solicitor, will move the court to dismiss the bill of complaint in the above-entitled cause.

Washington, April 9, 1879.

WARRICK MARTIN,
Solicitor for Defendants.

I acknowled' service of the above and agree to argue said motion, without objection, at the time named, if the court will hear the same.

April 9, '79.

L. G. HINE,
For Compl't.

41 *Decree overruling def't's plea and demurrer, with leave to ans. in 20 days.—Filed June 5, 1879.*

In the supreme court of the District of Columbia, June special term, 1879.

MURRAY
vs.
AGER ET AL. } In equity.

This cause came on to be heard at this term upon the demurrer and plea of the defendants, and was argued by counsel; upon consideration thereof, it is thereupon, this 5th day of June, 1879, ordered and adjudged that said plea and demurrer be, and they are hereby, overruled, with leave to the defendants to answer in twenty (20) days, if so advised.

By the court:

MACARTHUR, *Justice*.

42 *Order setting aside decree overruling demurrer.—Filed June 9, 1879.*

In supreme court, D. C.

T. C. MURRAY
vs.
AGER ET AL. } In eq. No. 6545.

It is ordered by the court that the decree herein made overruling the demurrer stand for argument June 9, 1879.

By the court:

MACARTHUR, *Justice.*

We consent.

T. T. CRITTENDEN,
Att'y for Def't, W. Ager.
L. G. HINE, *For Compl't.*

43 *Waiver of points* 1, 3, & 4, *raised by demurrer.—Filed Dec.* 8, 1879.

Supreme court, D. C. In equity.

MURRAY
vs.
AGER.

DEC. 8, 1879.

It is agreed that the objections raised in the 1st, 3rd, and 4th points in the defendant's demurrer are hereby waived and the plaintiff allowed to correct his bill in those respects by interlineation at banc.

WARRICK MARTIN,
Att'y of Defendants.

44 *Decree overruling demurrer & plea.—Filed Dec.* 8, 1879.

In the supreme court of the District of Columbia, December special term.

TALBOT C. MURRAY
vs.
WILSON AGER. } No. 6545. Equity.

This cause came on to be heard at this term upon the demurrer and plea of the defendants and was argued by counsel for the respective parties. Upon consideration whereof it is, this 8th day of December, A. D. 1879, ordered, adjudged, and decreed that said demurrer and plea be, and the same are hereby, overruled, with leave to defendants to answer in thirty (30) days from this day, if so advised.

By the court:

MACARTHUR, *Justice.*

45 *The separate answer of Wilson Ager to the bill of complaint.—Filed Jan. 7, 1880.*

In the supreme court of the District of Columbia.

TALBOT C MURRAY
vs.
WILSON AGER AND ELISHA C. AGER. } Equity doc. 19. No. 6545.

The separate answer of Wilson Ager to the bill of complaint of said plaintiff.

1. This defendant admits the truth of the statements in the first paragraph of the bill.

2. This defendant admits the statements in the second paragraph of said bill so far as they relate to himself, but he denies them so far as they relate to the defendant Elisha C. Ager. He alleges that Elisha C. Ager was not at the time said bill was filed and is not now a resident of the District of Columbia; that, on the contrary, Elisha C. Ager had resided in the city of San Francisco, California, for fourteen
46 months before said bill was filed, and he still resides there; that said Elisha C. Ager, at the time of the filing of said bill, had no legal interest in the inventions prayed to be sold under execution issuing from and out of this court for the payment of said judgment at law, having conveyed the same to this defendant on the 8th of October, 1877, as will fully appear by a copy of said conveyance, marked Exhibit D, and filed by the plaintiff with the bill of complaint, to which this defendant refers and prays that the same may be taken as a part of this his answer. In further answer to the 2d paragraph of said bill this defendant alleges that Elisha C. Ager was not a party to said suit at law in which the judgment upon which this bill is filed was obtained; that he is not a party to said judgment, and this defendant is advised by counsel and believes that said Elisha C. Ager cannot be made liable to pay the same.

47 3. In answer to the 3rd paragraph of said bill, this defendant admits that a judgment was obtained against him in the law branch of this court on or about the 10th of April, 1876, for about the sum charged in said bill; that said judgment was against him only as shown by the partial copy thereof, filed with the bill of complaint; that said suit was brought against D. P. Orms, J. M. Orms, and this defendant upon two notes made by D. P. Orms and J. M. Orms and endorsed by this defendant, said notes having been obtained from the makers thereof in part payment of 300,000 bricks sold them by the agent of this defendant; that said notes were not paid at maturity; that suit was brought thereon and judgment obtained therefor as aforesaid, not against D. P. Orms, J. M. Orms, and this defendant, but against this defendant only.

In further answer to said 3rd paragraph of said bill this defend-
48 ant alleges that though said judgment was obtained on the 10th of April, 1876, no fieri facias was issued in said case to collect said judgment for more than two years and a half after said judgment was obtained; that this defendant is informed and believes and alleges that said notes could have been collected from the makers of said notes had due diligence been exercised by the plaintiff in this suit.

In further answer to said 3rd paragraph of said bill, this defendant alleges that the fieri facias did not issue on said judgment until the 30th of November, 1878, and that it did issue at that time; that only four days

after the issuing of said fieri facias the same appears returned nulla bona, though it does not allege that any demand had been made upon this defendant for property to pay said judgment; and this defendant alleges that no such demand was made upon him by the marshal
49 or any one for him; that said return was made upon the 4th of December, 1878, and that the bill of complaint in this case was filed on the 5th of December, 1878, only one day after said return; and that upon said 5th of December, 1878, a certified copy of that portion of said bill which prays that an injunction might be issued restraining this defendant, his agents, and attorneys from selling said invention or any interest therein, was filed by the plaintiff or his counsel in the Patent Office and was there recorded, greatly to the damage and injury of this defendant, to prevent him from making sales of said inventions for money with which to pay this and other debts.

This defendant alleges that a conspiracy existed and still exists between the plaintiff and others to this defendant unknown, to lock said inventions up, so that this defendant could not sell them or any of them, by placing a cloud upon his title thereto, that he might be pre-
50 vented from making sales and realizing money to pay his debts, and that said inventions might be sold from him under an execution issuing out of this court for a sum vastly below the value of said inventions; that this defendant has already been damaged to a large amount by the placing of said certificate upon the record in the Patent Office, where it had no right to be, no injunction ever having been obtained in the case.

4. In answer to the 4th paragraph of said bill this defendant admits that he has no real or personal estate in the District of Columbia subject to seizure and sale under execution at law; that he also admits that he is the patentee of the invention for cleaning and scouring grain as named and referred to in said bill of complaint by the proper numbers thereof; that he also admits he is the owner of interests in the other patent rights referred to in said bill, and that the copies of patents
51 filed as exhibits to said bill are correct copies of the originals thereof.

This defendant, further answering the 4th paragraph of said bill, admits that said patent rights prayed in said bill to be seized and sold are not only worth more than would pay said judgment, but he says they are worth hundreds of thousands of dollars, and that to comply with the prayer of the bill and seize and sell said inventions would result in great loss to this defendant and be an injustice and wrong. Said patents are, as this defendant believes, correctly described in said bill and in the exhibits filed therewith.

5. In answer to the fifth paragraph of said bill, this defendant admits, that on or about the 26th day of September, 1876, this defendant conveyed to Elisha C. Ager all his right, title, and interest in and to all of said inventions as described in said bill of complaint; but
52 this defendant denies all the frauds, conspiracy, and collusion between him and said Elisha C. Ager relating to said patents and said conveyance charged in said bill of complaint; and he alleges that said conveyance was not made to avoid the payment of said judgment or with any thought thereof; that on the contrary said judgment was obtained against him on the 10th of April, 1876, and the said conveyance by him to Elisha C. Ager, his son, was not made until the 26th of of September, 1876, nearly six months after said judgment was obtained; that this defendant was in the city of Washington during the whole of the spring and summer of 1876, and was well aware of said

judgment, but he had no fears of the seizure and sale of said patent rights under said judgment either at law or in equity, as he had long previously been advised by counsel, and then believed and now believes that said rights granted him by the United States could not be taken
53 from him by seizure and sale or without his consent; that no such considerations had any influence upon him in causing him to make said conveyance to his son Elisha C. Ager.

In further answer to said fifth paragraph of said bill, this defendant states that the sole causes of said conveyance at said time to Elisha C. Ager, were the following:

1st. In the month of September, 1876, this defendant was afflicted with something like a sun-stroke, which confined him to his room for weeks; that it was extremely doubtful at that time whether he, this defendant, would survive said attacks; that while thus afflicted with the uncertainty of ever being able to attend to his own business, and having perfect confidence in the honor, ability, and honesty of said Elisha C. Ager, who then owned an equitable interest of one-third in said patents, and now owns said interest, and desiring to place his said patents in the hands of one who understood them and could and
54 would in case of the death of this defendant or of his continued inability to attend to said patents himself, attend to and make sales of the same, this defendant made said conveyance to said Elisha C. Ager, so that he could protect his own interest therein and sell the interest of this defendant therein to support his family and to pay his debts without the formality and delays of the law in relation thereto in case of the death of this defendant. This defendant again denies all the fraud, conspiracy, and collusion charged in said bill.

In further answer to the 5th paragraph of said bill, this defendant says that the discrepancy between the numbers of the patents so conveyed to Elisha C. Ager and those reconveyed by said Elisha C. Ager to this defendant arises from the fact that the same patent was reissued twice, and that the numbers of the two reissues are different, though the invention is the same.

In further answer to said 5th paragraph of said bill, this de-
55 fendant admits that the same patents and the interests therein which this defendant conveyed to said Elisha C. Ager on the 26th of September, 1876, were reconveyed by Elisha C. Ager to this defendant on or about the 8th of October, 1877, with the exception of those interests in said inventions which Elisha C. Ager had sold between the 26th of September, 1876, and the 8th of October, 1877; that the money realized for sales made by Elisha C. Ager during said time, amounted as now remembered by this defendant, to about $5,000, two-thirds of which were paid over by Elisha C. Ager to this defendant or on his account, and one-third of which was retained by Elisha C. Ager, according to his interest in said patents.

In further answer to said 5th paragraph of said bill, this defendant says that while the legal title to said inventions was in Elisha C. Ager, for the reason already stated, this defendant still retained his two-thirds interest therein; that the following are the roasons why
56 said patents were reconveyed to this defendant on the 8th of October, 1877:

1st. This defendant was restored to health.

2d. That in October, 1877, Elisha C. Ager was about to remove to California to take up his permanent residence there, and could not, while in California, attend to making sales and conveyances east of the Rocky Mountains.

3rd. That all the interests which Elisha C. Ager and this defendant wished to dispose of west of the Rocky Mountains had been sold.

4th. That when sales were made east of said mountains said Elisha C. Ager wished his interest sold the same as the interest of this defendant.

This defendant again denies all fraud, conspiracy, and collusion between him and Elisha C. Ager in relation to said conveyances of the 26th of September, 1876, and of the 8th of October, 1877.

6. In answer to the 6th paragraph of said bill, this defendant
57 admits that owing to the peculiar nature of said property in said patents, it is not subject to seizure and sale on execution at law, and he is informed by counsel and believes and alleges that property in patents rights cannot be reached by a creditor's bill in equity and be seized and sold under execution issuing out of a court of equity.

In further answer to said 6th paragraph of said bill, this defendant admits that at the time of filing said bill of complaint, said conveyance from Elisha C. Ager to this defendant was not recorded in the Patent Office; but he alleges that said conveyance was at said time on file in the clerk's office of the supreme court of the District of Columbia, this defendant having filed the same in the case of Ager against Hall's, in the month of October, 1878; that this defendant had no reason for keeping said conveyance from the Patent Office previous to its being filed in said case, excepting neglect so to do; that this defendant had
58 perfect confidence in said E. C. Ager that he would not take advantage of this defendant by making a conveyance of the same interest to another person, and he therefore had no occasion to be in haste about the recording thereof.

This defendant denies all fraud, or intention of fraud and deception in failing to place said conveyance upon the record, and he alleges that the causes which he has assigned are the true and only one' why it was not so recorded.

In further answer to said 6th paragraph of said bill, this defendant says that said conveyance was deposited in court in October, 1878, with the understanding with the court that this defendant should have the privilege of withdrawing said original paper, that it might be filed in the Patent Office for record by substituting a true copy therefor, which has since been done, and the original filed in the Patent Office for record and recorded.

This defendant denies all fraud and deception, and all intention
59 of fraud and deception, charged in said paragraph of said bill.

This defendant also denies the scheme and fraud charged in said 6th paragraph of said bill in making said conveyance to said Elisha C. Ager, the reasons for which have been fully assigned in this answer to the said bill of complaint.

This defendant further denies that he has ever cheated his creditors or ever had any intention so to do. This defendant admits that said patents belong to him, in the way and as herein before stated; but he denies that they can or should be sold to pay said judgment as prayed in said bill.

Having fully answered said bill of complaint, this defendant prays that the same may be dismissed with costs.

WILSON AGER.

WARRICK MARTIN,
Solicitor for Def'd'ts.
T. T. CRITTENDEN,
Of Counsel.

60 I, Wilson Ager, on oath depose that I have heard read the foregoing answer by me subscribed, and know the contents thereof, and that the same is true of my own knowledge, excepting as to those things stated upon information and belief, and as to them I believe them to be true.

WILSON AGER.

Sworn to before me Jan'y 7, 1880.

R. J. MEIGS, *Clerk.*
By M. A. CLANCY, *Ass't Clerk.*

61 *The separate answer of Elisha C. Ager to the bill of complaint.—Filed Jan. 7, 1880.*

In the supreme court of the District of Columbia.

TALBOT C. MURRAY
vs.
WILSON AGER AND ELISHA C. AGER. } Equity. Doc. 19, No. 6545.

The separate answer of Elisha C. Ager to the bill of complaint of said plaintiff.

1. This defendant admits that the plaintiff resides in the District of Columbia and sues in his own right.

2. This defendant admits that Wilson Ager resides in the District of Columbia, and is sued in his own right; that this defendant denies that he resides in the District of Columbia, or that he has resided there for more than two years last past; he alleges that he resides in San Francisco, California, where he has resided since October, 1877.

62 In further answer to said 2nd paragraph of said bill, this defendant alleges that he was not a party to said suit at law in which the judgment upon which the bill is filed was obtained; that he is not a party to the said judgment, and that he is informed by counsel, and believes that he is improperly made a party to this suit, not being a party to the said judgment or liable therefor.

3. In answer to the third paragraph of said bill, this defendant admits that, on or about the 10th of April, 1876, said judgment at law was obtained against Wilson Ager, but alleges that the notes upon which said judgment was obtained were given by D. P. Orms and J. P. Orms in part payment of 300,000 bricks sold by Wilson Ager to them, they being builders in the city of Washington and supposed at said time to be responsible.

4. In answer to the 4th paragraph of said bill, this defendant says that he has no property in the District of Columbia subject to
63 seizure and sale under an execution at law, and he is not aware that codefendant Wilson Ager has.

Expunged by order of court, Jan'y 27, 1880.

And in further answer to said paragraph of said bill this defendant states that he is informed by counsel, and believes and alleges that a patent-right is an incorporated right which is not located in the District of Columbia, and is not within the jurisdiction of this court for the purposes prayed for in said bill, and that the same is not subject to seizure and sale under an execution proceeding from a court of equity or a court of law; and this defendant claims the same effect for these facts as if regularly pleaded.

In further answer to said bill this defendant admits that said patent

rights prayed in said bill to be seized and sold to pay said judgment are not only worth more than sufficient to pay said judgment, but he alleges they are worth hundreds of thousands of dollars, and that to sell them to pay said judgment would be a great sacrifice thereof,
64 and a great injustice and wrong to this defendant and to Wilson Ager, as well as to other creditors of Wilson Ager. This defendant has not had an opportunity to examine the exhibits filed with the bill to ascertain whether they do or do not represent correctly said inventions so prayed to be seized and sold, but for the purposes of this suit he admits that they do correctly represent said patents.

5. In answer to the fifth paragraph of said bill this defendant admits that, on or about the 26th day of September, 1876, Wilson Ager did assign to this defendant all his right, title, and interest in and to said letters patent referred to in said bill; but this defendant denies all the conspiracy, collusions, and fraud between this defendant and Wilson Ager in relation to said conveyance and the objects thereof as charged in said bill of complaint; and this defendant alleges the following to have been the circumstances which caused said conveyance.

1. This defendant was at that time a one-third owner of said
65 patents, or of the interest of said Ager therein, though the legal title thereto was in his father, Wilson Ager, who had usually made the contracts for the sale thereof and the conveyances of interests therein.

2. In the early fall of 1876, said Wilson Ager was attacked with what was alleged to be a sun-stroke, which confined him to his room for weeks; that it was uncertain whether he would recover from said attack, or if he did partially recover, whether he would be able to attend to his business; that for these reasons, and no others, said conveyance was made by Wilson Ager to this defendant at the time stated in said bill, that sales and conveyances might be made without unnecessary delay; this defendant again denies all conspiracy, collusion, and fraud between him and Wilson Ager in relation to said conveyance.

In further answer to said 5th paragraph of said bill, this defendant states that said judgment at law was obtained on the 10th of
66 April, 1876, and said conveyance was not made to him until the 26th day of September, 1876, and was made on that day; and that both this defendant and Wilson Ager had, previous to said judgment and to said conveyance, been informed by counsel and believed, and this defendant now believes, that a patent right cannot be seized and sold to pay a debt of the patentee, either in law or in equity.

In further answer to said 5th paragraph of said bill, this defendant says that not having copies of said patents before him, he is unable to state whether said copies filed correctly represent said patents or not; but for the purpose of this suit, he concedes that said patents are correctly represented. This defendant alleges that the inventions conveyed by Wilson Ager to him, on the 26th of Sept., 1876, are the same conveyed by him to Wilson Ager on the 8th of October, 1877, excepting only the interests therein which this defendant had sold between September 26th, 1876, and October 8th, 1877.

67 He further says that two-thirds of all sales made during said time by him, so far as paid for, were paid over by him to Wilson Ager, and the one-third thereof retained by him, according to the interest of each in said inventions; that the sum of money so realized from sales during said time did not, as this defendant now remembers, exceed $5,000.

In further answer to said 5th paragraph of said bill this defendant

admits that, on or about the 8th of October, 1877, he reconveyed to said Wilson Ager all the rights to said patents which Wilson Ager had conveyed to him on the 26th of September, 1876. The reasons for this conveyance were the following:

1. Wilson Ager had regained his health, and was able to attend to his own business.

2. This defendant had sold all the interest which he and his father wished sold west of the Rocky Mountains, they intending to retain the unsold interests themselves, in said Territory.

68 3. At time of making said conveyance of the 8th of October, 1877, this defendant was about to leave Washington for California and did leave soon thereafter; and it would have been impossible for him to attend to the making of contracts and conveyances, and to attend to said inventions east of said mountains.

4. This defendant wished his interest as well as that of Wilson Ager sold, if sales were made; for these reasons, and no others, said conveyance was made; but this defendant then owned, and now owns, a one-third interest in the invention so conveyed or in the interests so conveyed; and he insists that his interests should not be sold to pay the debts of D. P. Orms, J. M. Orms, or Wilson Ager, for which he is not liable.

6. In answer to the 6th paragraph of said bill, he admits that patent rights are not subject to execution under a judgment at law, and he alleges, upon information and belief, that they cannot be so sold under a decree in equity.

69 This defendant further says that he has no knowledge of fraud or the intention of fraud on the part of Wilson Ager in not placing said conveyance of Oct. 8, 1877, upon the record in the Patent Office at the time named in said bill, if such be the fact.

This defendant again denies all the fraud, conspiracy, and collusion charged in said bill, and denies that either he or Wilson Ager has ever defrauded or intended to defraud his creditors or any of them.

Having answered said bill as fully as he was advised by counsel it was necessary and proper for him to answer, this defendant prays that said bill of complaint may be dismissed so far as it relates to him, with costs.

E. C. AGER.
WARWICK MARTIN,
Solicitor for Defendants.

T. T. CRITTENDEN,
Of Counsel.

70 DISTRICT OF CALIFORNIA,
City & County of San Francisco, ss:

On this 27th day of December, A. D. 1879, before me personally came Elisha C. Ager, who, being by me duly sworn, says he is one of the defendants in the above-entitled action; that he has read the foregoing answer by him subscribed, & knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information & belief, & as to these matters he believes it to be true.

E. C. AGER.

Subscribed & sworn to before me this 27th day of December, 1879.
[SEAL.] DAVID LYON,
Commissioner U. S. Circu't Court, Dist. of Cal.

71 *Motion to strike out part of defendants' answers.—Filed Jan. 9, 1880.*

In the supreme court of the District of Columbia.

TALBOT C. MURRAY
vs.
WILSON AGER AND ELISHA AGER. } In equity. No. 6545, doc. 19.

And now, January 8th, 1880, comes the plaintiff, and moves this honorable court to strike out so much of the 4th paragraph of the separate answers of the defendants herein, as raises the question whether a patent-right may be reached, and sold, by a judgment creditor's bill, and the proceeds of sale applied to the payment of the debts of the inventor, because res adjudicata in the cause.

L. G. HINE, AND
S. T. THOMAS.
Counsel for Plaintiff.

72 *Order allowing motion to strike out as to E. C. Ager's answer.—Filed Jan. 27, 1880.*

Supreme court of the D. C.

TALBOT C. MURRAY
vs.
WILSON AGER ET AL. } In equity. No. 6545, doc. 19.

The motion of the plaintiff to strike out the 4th paragraph of the answer of defendant, because re' adjudica coming on to be heard, and having been by counsel pro and con, it is, this 27th day of January, 1880, ordered that said motion be and the same is hereby allowed, as to the answer of defendant Elisha C. Ager.

By the court:

CHAS. P. JAMES, *Justice.*

73 *Decree dismissing bill.—Filed Jul. 6, 1880.*

In the supreme court of the District of Columbia.

TALBOT C. MURRAY
vs.
WILSON AGER AND ELISHA C. AGER. } In equity. Docket 19, No. 6545.

This cause coming on to be heard upon the bill and answer, and the same having been submitted upon brief, it is hereby, this 6th day of July, ordered, adjudged, and decreed by the court that the bill of complaint in this cause be and the same is dismissed with costs.

W. S. COX, *Justice.*

74 *Precipe to enter appeal.—Filed Jul. 13, 1880.*

MURRAY
vs.
AGER ET AL. } 6545. Eq. doc. 19.

Clerk will please enter an appeal to the court in general term from the decree passed in this cause July 6.

HINE & THOMAS,
For Deff., Appellant.

Appeal entered as ordered July 6, 1880.
By the clerk.

75 *Opinion of Justice Hagner.*

Supreme court, District of Columbia, January term, 1881.

TALBOT C. MURRAY
v.
WILSON AGER ET AL. } In equity. No. 6545, doc. 19.

The bill in this case is filed by Talbot C. Murray, alleging the recovery by him of a judgment on the law side of this court against the defendant Wilson Ager and others, for $2,164.66. It avers that an execution was duly issued upon the judgment, which was returned nulla bona by the marshal; that the defendant Wilson Ager is the inventor and owner of certain inventions secured to him by letters patent from the United States, which are described in the bill "for improvement in machines and processes for decorticating grain;" that the complainant is without any means of realizing his judgment, except by the subjection of the patent right to its payment, and the bill prays that his rights as patentee may be sold under the decree of the court, and
76 the proceeds applied to the payment of the judgment; that an injunction may be granted to restrain the defendant Wilson Ager from selling or assigning the patents during the pendency of the suit; and that the defendant, after sale has been made, may be compelled to execute such assignment of the patents to the purchaser as may be necessary to vest the title in conformity with the patent laws of the United States.

The defendant's answer admits the rendition of the judgment, the return unsatisfied of the execution issued thereon, and that he is the owner of the patent rights described in the bill; but he claims that these are not subject to seizure and sale under the proceedings instituted by the complainant.

The court below passed a decree dismissing the bill, and the complainant appealed to this court.

The question involved in the case is one of great interest, and of novelty, so far as we have been able to discover.

77 It is insisted upon the part of the patentee that the rights secured to him by his patent cannot be made the subject of sale by any process at law, or in equity, against his consent.

The Constitution, by article 1st, section 8, declares that Congress shall have power to promote the progress of science and the useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries. In conformity with this provision a careful system of laws has been devised regulating the issue of patents and directing the mode in which they may be assigned. Section 4898 of the Revised Statutes declares that every such patent, or interest therein, shall be assignable in law by an instrument in writing; and that such assignment or conveyance shall be void as against any subsequent purchaser or mortgagee, for valuable consideration without notice, unless recorded in the Patent Office within three
78 months from its date. Section 4898 prescribes the mode in which a patent may be issued to an executor or administrator of an inventor in trust for his heirs at law, or devisees, in case of the death of the patentee before the issue of the patent; and declares that the patent shall be enjoyed by his representatives or devisees, in as full manner and on the same terms and conditions as it might have been enjoyed by the original patentee. Similar provisions exist in the statutes with

reference to copyrights, which are declared to be assignable by an instrument in its prescribed form recorded in the office of the Librarian of Congress.

It is insisted upon the part of the patentee that it is well settled upon authority that the patent-right in the hand of the inventor cannot be made the subject of sale under an execution at law, and the case in 14 Howard, 528, Stevens v. Cady, is relied upon as establishing this
79 proposition. It is to be observed that the case refers to a copy-right, and not to a patent-right; and although it is intimated in the case of Stevens v. Gladding, in 17 Howard, 574, that there is no common law copyright in this country, it is well settled that there existed at the common law a marked distinction between the rights of an author to his writings and those of an inventor in his invention.

The authorities declare that, independent of statute or of grant from the government, an author had a right to the exclusive publication of his writings, while no such exclusive right existed independent of statute in an inventor. This last position is asserted by Judge Taney in 10 Howard, Gaylord v. Wilder, who declares that an inventor has no exclusive right to his invention until he obtains a patent, and that no action could be maintained by an inventor against any one for using it before the issuing of the patent. The text-writers explain
80 this distinction upon the idea that the writer creates something which had no existence until produced by himself, as the "Paradise Lost" could never have been written unless Milton had composed it. Whereas an inventor, like a discoverer in astronomy or geography, only brings to light matters which had existed long previously, as the propulsive power of steam must have been discovered sooner or later if the attention of Watts had never been turned to the subject.

But, conceding that patent-rights and copy-rights stand on the same footing, let us examine how the decision in 14 Howard controls the present inquiry.

The facts of that case are, that the complainant took out a copy-right of a map of the State of Rhode Island; that while engaged in publishing and selling the map, by virtue of the copy-right, a judgment was recovered against him by a creditor, execution issued, and the copper plate upon which the map in question was engraved was seized and sold by the sheriff to the defendant, who thereupon proceeded to
81 strike from the plate copies of the map; and the prayer of the bill was that an injunction might be granted to restrain its printing and publishing in violation of the complainant's copy-right.

The single question in the case, say the court, is whether or not the property acquired by the defendant in the copper-plate at defendant's sale carried with it, as an incident, the right to print and publish the map engraved upon its face. The Supreme Court declare that all that was sold by the sheriff was the piece of copper upon which the map was engraved; that the sheriff did not attempt to sell, and had no right to sell, under the execution, the copyright. "The copyright is the exclusive right to the multiplication of the copies for the benefit of the author or his assignees, disconnected from the plate or any other physical existence. It is an incorporeal right to print and publish the map or, as said by Lord Morrisfield in Miller v. Taylor (4 Burr. 2396), a property in notion, and has no corporeal, tangible substance."
82 The court proceeds:

"The copper-plate engraving, like any other tangible personal property, is the subject of seizure and sale on execution, and the title passes to the purchaser the same as if made at a private sale; but the

incorporeal right, secured by the statute to the author to multiply copies of the map by the use of the plate, being intangible, and resting altogether in grant, is not the subject of seizure or sale by means of this process, certainly not at common law."

So far as this applies to copy-rights, it seems explicit enough. But the court proceeds:

"No doubt the property may be reached by a creditors' bill, and be applied to the payment of the debts of the author the same as stock of the debtor is reached and applied, the court compelling a transfer and sale of the stock for the benefit of the creditors. But in case of such remedy, we suppose it would be necessary for the court to compel a transfer to the purchaser in conformity with the requirement of
83 the copyright act, in order to invest him with a complete title to the property. * * * An assignment, therefore, that would invest the assignee with the property of the copyright according to the act of Congress, must be in writing and signed in the presence of two witnesses, and it may be well doubted whether a transfer, even by sale, under a decree of a court of chancery, would pass the title so as to protect the purchaser, unless by a conveyance in conformity with this requirement."

The bill in the present case is evidently framed in conformity with the suggestion in the opinion of the Supreme Court, and as we understand it, is warranted by the deliberate judgment of that tribunal.

It is insisted, however, upon the part of the patentee that so much of the opinion as asserts that the copy-right may be subjected to a decree in equity is obiter dictum, and that it is overruled in the subsequent case of Stevens v. Gladding (17th Howard, 450). That case arose
84 under the same state of facts and involved the same controvesy which was determined in 14 Howard. It appears that under the opinion in 14 Howard the case was remanded to the circuit court for the district of Rhode Island. When the mandate arrived the judge who heard the case below had died, and when the case of Stevens v. Gladding was called the counsel for the respondent desired to be heard "though," as the judge states, "he frankly avowed that the question passed on in the former case was the only one which could now be raised."

We have examined that decision with care and we can see nothing in it that can be considered as reversing the ruling in 14th Howard, which asserts, as we understand, the right to maintain such a bill as the present one. Judge Curtis, in his opinion, states that the positions assumed by the counsel of the judgment-creditor are, that copy and patent rights are subject to seizure and sale on execution; that whenever the owner of the copyright of a map causes a plate to be made
85 which is capable of no beneficial use except to print his map, he thereby annexes to the plate the right to use it for printing the map, and also the right to publish and sell the copies and print it, and that when the plate is sold on execution these rights pass with the plate as incidents or accessories thereto, though no mention is made of them in the sale.

It is in reference to this contention that Judge Curtis uses the language, which has been relied upon in behalf of the patentee in this case. He declares that there would be "great difficulty in assenting to the proposition that patent and copy rights held under the laws of the United States are subject to seizure and sale on execution." Not to repeat what he said on this subject in 14th Howard, 531, it may be added that these incorporeal rights do not subsist in any particular State or district; they are coextensive with the United States. There is nothing

in any act of Congress, or in the nature of the rights themselves to
86 give them locality anywhere, so as to subject them to the process of courts having jurisdiction limited by the lines of States and districts; that an execution out of the court of common pleas for the county of Bristol, in the State of Massachusetts can be levied on an incorporeal right subsisting in Rhode Island or New York, will hardly be pretended; that by the levy of such an execution the entire right could be divided, and so much of it as might be exercised within the county of Bristol sold would be a position subject to much difficulty.

It thus appears that the question alluded to by Judge Curtis is that which had been urged in argument by counsel, viz, the right to subject the copy and patent right to sale by execution at law, and that the difficulties suggested by the judge have reference only to the sale under such an execution. But the Supreme Court in the next sentence show that they do not design to decide even this point. Judge Curtis adds:
87 "These are important questions on which we do not find it necessary to express an opinion, because in this case neither the copyright, as such, nor any part of it was attempted to be sold." And the judge proceeds to show that the only thing attempted to be sold by the sheriff was the right to the copper-plate on which the map had been engraved. In a latter part of the opinion the judge says:

"For these reasons, as well as those stated in 14 Howard, our conclusion is that the mere ownership of the copper-plate of a map by the owner of the copy-right does not attach to the plate the exclusive right of printing and publishing the map held under the act of Congress or any part thereof, but the incorporeal right subsists wholly separate from and independent of the plate, and does not pass with it by a sale thereof on execution."

The only questions beyond this which are discussed by the court are, whether the prayer of the bill that the penalties imposed by the
88 act of Congress shall be decreed against the purchaser, and whether there should be an account of the profits. We see nothing in the decision which in any way can be held as a withdrawal by the Supreme Court of the distinct assertion in 14 Howard, that an interest under a copy or patent right can be subjected to the payment of the debts of the patentee by a proceeding in equity.

The argument, ab inconveniente, urged by Judge Curtis as a reason why such rights should not be considered as liable to seizure under an execution of law is invoked in the present case. It is insisted that the Constitution and laws passed are designed to secure to the inventor and author the rights to their inventions and writings, and that this provision would be nullified if those rights were subject to seizure in any way by creditors. But it is plain that the benefit designed by the constitutional provision would be no more destroyed by their sale for the payment of the inventor's creditors than by the voluntary
89 sale by himself. If sold to pay his debts, he has already obtained the benefit of the grant as much as if sold of his own motion. It is clear that he would have the right voluntarily to sell his entire right in any—the remotest—portion of the country. Notwithstanding that those rights are coextensive with the Union, they would pass to his personal representative or legatee, and could be subjected to the payment of the debts of such heir or devisee in any part of the country.

It was long ago settled, as far back as the case in 3 Bos. & Pul., 777, Hesse v. Stevenson, decided in 1803, that, independent of any provision in the English bankrupt law, the right of the patentee in an invention

incorporeal right, secured by the statute to the author to multiply copies of the map by the use of the plate, being intangible, and resting altogether in grant, is not the subject of seizure or sale by means of this process, certainly not at common law."

So far as this applies to copy-rights, it seems explicit enough. But the court proceeds:

"No doubt the property may be reached by a creditors' bill, and be applied to the payment of the debts of the author the same as stock of the debtor is reached and applied, the court compelling a transfer and sale of the stock for the benefit of the creditors. But in case of such remedy, we suppose it would be necessary for the court to compel a transfer to the purchaser in conformity with the requirement of
83 the copyright act, in order to invest him with a complete title to the property. * * * An assignment, therefore, that would invest the assignee with the property of the copyright according to the act of Congress, must be in writing and signed in the presence of two witnesses, and it may be well doubted whether a transfer, even by sale, under a decree of a court of chancery, would pass the title so as to protect the purchaser, unless by a conveyance in conformity with this requirement."

The bill in the present case is evidently framed in conformity with the suggestion in the opinion of the Supreme Court, and as we understand it, is warranted by the deliberate judgment of that tribunal.

It is insisted, however, upon the part of the patentee that so much of the opinion as asserts that the copy-right may be subjected to a decree in equity is obiter dictum, and that it is overruled in the subsequent case of Stevens v. Gladding (17th Howard, 450). That case arose
84 under the same state of facts and involved the same controvesy which was determined in 14 Howard. It appears that under the opinion in 14 Howard the case was remanded to the circuit court for the district of Rhode Island. When the mandate arrived the judge who heard the case below had died, and when the case of Stevens v. Gladding was called the counsel for the respondent desired to be heard "though," as the judge states, "he frankly avowed that the question passed on in the former case was the only one which could now be raised."

We have examined that decision with care and we can see nothing in it that can be considered as reversing the ruling in 14th Howard, which asserts, as we understand, the right to maintain such a bill as the present one. Judge Curtis, in his opinion, states that the positions assumed by the counsel of the judgment-creditor are, that copy and patent rights are subject to seizure and sale on execution; that whenever the owner of the copyright of a map causes a plate to be made
85 which is capable of no beneficial use except to print his map, he thereby annexes to the plate the right to use it for printing the map, and also the right to publish and sell the copies and print it, and that when the plate is sold on execution these rights pass with the plate as incidents or accessories thereto, though no mention is made of them in the sale.

It is in reference to this contention that Judge Curtis uses the language, which has been relied upon in behalf of the patentee in this case. He declares that there would be "great difficulty in assenting to the proposition that patent and copy rights held under the laws of the United States are subject to seizure and sale on execution." Not to repeat what he said on this subject in 14th Howard, 531, it may be added that these incorporeal rights do not subsist in any particular State or district; they are coextensive with the United States. There is nothing

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It was long ago settled, as far back as the case in 3 Bos. & Pul., 777, Hesse v. Stevenson, decided in 1803, that, independent of any provision in the English bankrupt law, the right of the patentee in an invention

would pass as assets to his assignee in bankruptcy. Lord Alvanley, in delivering the opinion in the case, says: "But if the inventor avail himself of his knowledge and skill, and thereby acquire a beneficial interest which may be the subject of assignment, I cannot frame to
90 myself an argument why that interest should not pass in the same manner as any other property acquired by his personal industry. * * * We are, therefore, clearly of the opinion that the interest in the letters patent was an interest of such a nature as to be the subject of assignment by the commissioners in bankruptcy."

And by the last bankrupt law, R. S. U. S., sec. 5046, patent-rights and copy-rights, with the other classes of property therein enumerated, are expressly declared to be vested in assignee of the bankrupt. By section 5062 the assignee is required to sell all the estate of the bankrupt upon such terms as he thinks most for the interest of the creditors.

It cannot be denied that under this authority the assignee could make sale of the interest of a bankrupt patentee in the most valuable patents in the remotest corner of the country, in Alaska, or at the Dry Tortugas, and unless his discretion in this respect was restrained
91 by a court, upon the ground that its exercise was manifestly injurious to the interest or the estate; if the fact that the operation of the patent is coextensive with the Union, is sufficient to infer the absence of the power of sale under a decree, as suggested in 14 Howard, it is not easy to see why the same difficulty should not prevent the exercise by the assignee in bankruptcy of what would be his unquestioned right of the disposition of the patent-right.

If the contention on the part of the patentee in this case is correct, then it results that there may be a class of property in this country, yielding great revenues from the royalties, which would be exonerated by this special exemptions from the responsibility which attaches to all other classes of property, payment of the honest debts of the debtor, and that one possessed of such patent rights, by skilfully refusing to invest his revenues in any other description of property, may successfully baffle his creditors, though they may have supplied
92 him with the very means which enabled him to achieve the success of his patent.

We have been referred to two decisions alleged to have been made in this court; one by Justice Wylie and the other by Justice MacArthur, in which it is stated that the position contended for by the patentee in this case was sustained, but an enquiry from those judges has satisfied us that the cases went off on other points.

We have been referred to some decisions which it is alleged are at variance with the conclusions at which we have arrived, but a careful examination of them has satisfied us that such is not the case.

The case in Holmes' Reports, page 152, which decides that the trustee in insolvency, under the Massachusetts statute, has no title to a patent-right, proceeds upon the express words of the statute, which declares that only those species of property which can be seized by execution at law pass to the assignee; and as it is settled that
93 a patent-right cannot be taken under an execution at law, the statute necessarily excluded it as assets from the trustee in insolvency. The case in 1 Gallison, 485, simply declares that a sheriff who had sold under execution a number of patented machines for a debt due by the patentee, could not be held liable under that provision of the patent law which declares that the sale of patented ma-

chines without the consent of the patentee should subject the vendor to suit for damages.

In the case in 4 B. Monroe, 596, Cooper v. Gunn, it is decided that, where an author had conveyed the copyright of a book to a trustee for the benefit of his wife in fraud of his creditors, a judgment recovered by the trustee against the purchaser of the patent-right for part of the purchase-money could be subjected in equity to the payment of a judgment recovered by a creditor against the patentee, and the remarks of that court relied upon by the patentee's counsel in this case as
94 sustaining their position were not required in the case, and in our opinion, do not support their contention.

We have been appealed to with great earnestness, to decide in favor of the inviolability of the right of the patentee, for the reason that patentees as a class, notwithstanding the benefits they confer upon the community, seldom participate in the profits which are derived from their inventions; that they live laborious lives and die poor; and it is urged that it would be an additional hardship to deprive them of the exemption supposed to be secured to them by their grant from the United States.

Assuming the correctness of this supposition, and that it is true that they seldom reap the benefit of their labors, it results that what is supposed to be the present state of the law exempting those interests from sale, does not operate very beneficially in their behalf. If, notwithstanding the assumed exemption, they receive such slender
95 profits from their labor, a change in the law could not place them in a worse position. It may be that they might profit by a condition of things which would expose their interests at public sale to competition, and thus bring the merits of their inventions more prominently before the public.

For these reasons we are of opinion that the decree below should be reversed, and we will sign a decree directing the sale of the interest of the patentee for the payment of the judgment-creditor, and directing him to execute the assignment required by the statute, and in default of such assignment within a limited time, appoint a trustee with authority to execute the same.

Mr. Justice Wylie delivered the following dissenting opinion:

I am unable to agree with my brothers in the decision which is announced in this case, and although I have not prepared any formal opinion expressing the grounds of my dissent, I propose to state very briefly some of them.

96 The plaintiff here, Talbot C. Murray, at the April term, 1876, recovered a judgment on the law side of this court against Wilson Ager for $2,164.66, with interest and cost. On this judgment an execution was issued and return was made nulla bona. Wilson Ager, the defendant, must be regarded, therefore, as insolvent, as having no visible property on which an execution at law might be levied. The present proceeding is by a bill in equity, filed by the judgment-creditor for the purpose of reaching the interests of the defendant in a patent-right. The prayer of the bill is that pending the suit the defendant might be restrained from selling or assigning his patents; that said patents might be sold under the decree of the court, and the proceeds of the sale applied to the payment of the judgment, and that the defendant might be compelled to execute such assignment of his patents as might be necessary to invest title in the purchaser in conformity with the patent law.

the moment it is born and sold out to somebody else under execution, it would be no encouragement to men of that kind. And I feel more free to express my own judgment in regard to the case from the fact that no example has been produced, either in the English books or from our own in which a thing of this kind has been attempted.

The case in 14th Howard, Stevens v. Cady, contains what is ad-
105 mitted to be an obiter dictum of Judge Nelson. In that case it was decided that the copper-plate map carried no right to the copyright with it; it merely carried the copper-plate. That was the only question before the court. Judge Nelson does proceed to say that the copyright doubtless may be reached by a creditors' bill, but the same case having come again before the same court, Judge Curtis, in delivering the opinion of the court, says there are difficulties in regard to the subject of laying an execution upon patent*cuts* rights in addition to those that were mentioned by Judge Nelson upon a former occasion, and he says that one of these difficulties arises from the peculiar character of this property, an interest in a copyright which pervades the whole country, and it would not be right, in a State like Rhode Island, for the legal jusisdiction there to sell the whole interest in the copyright. So that I cannot consider this question as having been
106 yet determined by the Supreme Court of the United States. Here is an obiter of Judge Nelson which seems to incline one way, and a very strong one of Judge Curtis, in the same case, in the other direction, and, therefore, I have not felt bound by the authority of that case. This property, in my opinion, cannot be sold in this way.

107 *Decree in gen. term, reversing decree (at special term) of July* 6, 1880.—*Filed Mar.* 9, 1881.

In the supreme court of the district of Columbia. In general term.

TALBOT C. MURRAY
vs.
WILSON AGER ET AL. } In equity. No. 6554. Doc. 19.

This cause came on to be heard at the term upon the appeal of the complainant from the decree passed herein at the equity special term of this court, July 6th, 1880, and was argued by counsel for the respective parties and submitted. Upon consideration thereof, it is now, March 9th, A. D. 1881, adjudged, ordered, and decreed that said decree at special term be and the same is hereby in all things reversed and the said cause remanded to said special term with directions to enter a decree for a sale of complainant's interest in the patent-rights referred to in the bill, in default of his paying, by a day to be fixed in said decree, the judgment mentioned in the bill together with interest and costs, and also the costs of this proceeding to be taxed by the clerk of this
108 court, and further that in the event of a sale of said patent-rights the complainant be required to execute such assignments thereof as may be necessary to vest title thereto in the purchaser, in conformity with the patent laws of the United States, agreeably to the prayer of the bill, and that in default of the complainant executing such assignment, that some suitable be appointed trustee to execute the same within the time to be limited in said decree.

By the court.

D. K. CARTTER,
Ch'f Just.

109 *Stipulation for waiver of citation.—Filed May 6th, '81.*

Supreme court District of Columbia. In general term, May 6th, 1881.

TALBOT C. MURRAY
vs.
NELSON AGER AND ELISHA C. AGER. } In equity. No. 6545. Docket 19.

Whereas, in this cause in the supreme court of the District of Columbia, in general term, a final decree was rendered, March 9, 1881, in favor of the complainant therein, said Talbot C. Murray against the defendants therein, Wilson Ager and others. And whereas an appeal to the Supreme Court of the United States was prayed in open court by said defendants, Wilson Ager et al., when said final decree was made, and whereas said prayer for said appeal was accidentlly omitted from the said final decree by the solicitors of said plaintiff. It is, therefore: hereby stipulated by the parties hereto, that the issue and service of citation herein is hereby waived, and said appeal is taken herein to the Supreme Court of the United States, and all objections for want of citation are hereby waived by the parties hereto.

L. G. HINE,
S. T. THOMAS,
Counsel for Plaintiff.
WARRICK MARTIN,
T. T. CRITTENDEN,
For Defendants.

Whereupon, the court here orders that said appeal be allowed.

110 AUTHENTICATION OF RECORD.

Clerk's certificate.

CLERK'S OFFICE,
Supreme Court of the District of Columbia:

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 18th day of June, 1881.

[SEAL.]

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
Assistant Clerk.

Justice's certificate.

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 18th day of June, 1881.

[SEAL.]

D. K. CARTTER,
Chief Justice.

Clerk's certificate to justice's official character.

I, R. J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certifi-

cate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 18th day of June, 1881.

[SEAL.]

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
Assistant Clerk.

(Indorsement on cover:) No. 1034. Wilson Ager and Elisha C. Ager, appellants, vs. Talbot C. Murray. Dist. of Col. sup. court. Filed October 13, 1881.

J. McKENNEY, CLERK

In the Supreme Court of the United States.

WILSON AGER AND ELISHA C. AGER, APPELLANTS,

TALBOT C. MURRAY, APPELLEE.

APPEAL FROM SUPREME COURT OF THE DISTRICT OF COLUMBIA.

In Equity: Docket 19, No. 6545.

BRIEF OF APPELLANTS.

WARWICK MARTIN,
Solicitor for Appellants.

T. T. CRITTENDEN,
Of Counsel.

WASHINGTON, D. C.

In the Supreme Court of the United States.

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TALBOT C. MURRAY, APPELLEE.

APPEAL FROM SUPREME COURT OF THE DISTRICT OF COLUMBIA.

In Equity: Docket 19, No. 6545.

BRIEF STATEMENT OF THE CASE.

The bill in this case was brought upon a judgment obtained in the law branch of said court, April 10, 1876. The amount, including the interest thereon, up to the obtaining of the decree in equity, was about $2,800, for the payment of which seizure and sale were to take place.

The judgment at law was against Wilson Ager as endorser upon two notes of D. P. & J. M. Orms, builders of Washington, given for bricks sold them by Wilson Ager. These notes were endorsed and sold by Mr. Ager. Murray became the owner thereof.

The judgment was not obtained against the drawers of the notes, for reasons not shown. The bill was filed December 5, 1878. The prayer of the bill is for seizure and sale of certain patent-rights of Wilson Ager to pay said judgment at law.

The bill was demurred to for causes shown by the record. A plea was also filed to the jurisdiction of the court to grant the relief prayed for. The demurrer and plea were overruled, and the defendants allowed time to answer. They both answered within the time. Their answers are full and in every way responsive to the bill. All allegations of conspiracy and fraud are denied, and fully answered.

The case was heard upon bill, answers and brief, no testimony having been taken. The bill was dismissed by the court, and a decree to that effect entered.

The plaintiff in the Special Term appealed to the court in General Term. The latter court reversed the decree of the judge in Special Term, and decreed the seizure and sale of said patent-rights to satisfy said judgment at law. The defendants in the court below appeal to this court, asking for a reversal of the decree of the Supreme Court of the District of Columbia, for the following, among other reasons:

1. So far as we have been able to learn, the standard works upon patents are silent upon the question whether a patent or copyright can be seized and sold under a decree in equity. We are unable to account for this silence, excepting upon the ground that these authors considered the negative of this question so completely established in and by the nature of the right granted, and the terms used in conferring it, as to render all comment and reasoning upon the subject superfluous.

2. Though the patent laws of the United States conferring these rights have existed, and thousands of patents have issued under them, for nearly one hundred years, not one of these rights has ever been seized and sold under a judgment of a court of law or a decree of a court of equity, and the seizure and sale been sustained by a court of appeal.

THE CONSTITUTION.

But this matter of securing to inventors the sole and exclusive right to the advantages of their inventions for a limited period, did not escape the attention of the framers of the Constitution. In the eighth article of that immortal instrument, the framers provided as follows:

"The Congress shall have power—

"To promote the progress of science and useful arts, by *securing*, for limited times, to authors and inventors, *the exclusive right* to their respective writings and discoveries."

The power thus conferred upon Congress was to "promote the progress of science and the useful arts." How was this to be done? Answer, by securing to inventors and authors the *exclusive* right to their writings and discoveries. Would this be done for the time named in the patent, if, as soon as the patent was issued, a creditor of the inventor or author could, under a judgment at law or a decree in equity, seize and sell the right granted by the Government? Would "the progress of science and the useful arts be promoted" by such a proceeding?"

LAWS OF CONGRESS.

Have Congress complied with the wishes of the framers of the Constitution in this behalf? The following acts of Congress relating to patents and copyrights will show:

1. THE ACT OF APRIL 10, 1790, STATUTES 1, PP. 109, 110.

This is the first patent act, passed at the second session of Congress, under the Constitution. This law contains the following language:

"And thereupon granting to such petitioner or petitioners, his, her, or their heirs, administrators or assigns, for any term not exceeding fourteen years, the *sole and exclusive* right and liberty of making, constructing, using and vending to others to be used, the said invention or discovery."

Congress have, in this and all other acts relating to these rights,

conformed to the power given them by the Constitution. We need not say that creditors of the inventor are not named as among those who can make, use, or vend the patent right, without the consent of the inventor.

2. ACT OF FEBRUARY 21, 1793, STAT. 1, P. 318, SEC. 1.—"And thereupon granting to such petitioner or petitioners, his, her, or their heirs, administrators or assigns, for a term not exceeding fourteen years, *the full and exclusive right and liberty* of making, constructing, using, and vending to others to be used, the said invention or discovery." This act also excludes creditors.

3. ACT OF APRIL 17, 1800, STAT. 2, P. 37, SEC. 3.—"That where any patent shall be or shall have been granted pursuant to this or the above-mentioned act, (act of Feb. 21, 1793,) and any person without the *consent of the patentee*, his or her *executors, administrators or assigns first obtained in writing, shall make*, devise or sell the thing whereof the *exclusive right is secured to the said patentee, by such patent, such* person so offending shall forfeit and pay to said patentee, his executors, administrators or assigns, a sum equal to three times the actual damage sustained by such patentee, his executors, administrators or assigns, from or by reason of such offence, which sum shall and may be recovered, by action on the case, founded on this and the above-mentioned act, in the Circuit Court of the United States, having jurisdiction thereof." Comment cannot make this statue more explicit. We are well aware that the statute of July 8, 1870, takes the place of all previous statutes upon this subject, but we refer to previous statutes to show what has been the understanding upon this subject. We call attention to the fact that this statute (April 17, 1800,) authorizes a court of law to be invoked in the case, but not for the purpose of aiding a creditor to deprive the inventor of the right to his patent; but to collect for the benefit of the inventor the damage which he has sustained from the unlawful and improper use of the invention. Courts always aid a patentee in sustaining the rights granted him by the Government. They cannot be used to deprive him of those rights.

4. ACT OF APRIL 29, 1802, STAT. 2, P. 171, SEC. 2.—"That from and after the 1st day of January next, every person, being a citizen of the United States or resident within the same, who shall invent and design, engrave, etch, or work, or from his own works and inventions shall cause to be designed and engraved, etched or worked any historical or other print or prints, shall have *the sole right and liberty of printing, reprinting, publishing and vending such print or prints* for the term of fourteen years from the recording the title thereof in the clerk's office, as prescribed by law for maps, charts, book, or books." This acts relates to copyrights, and corresponds with acts already mentioned on the subject. *"The sole right and liberty" are the words* in this act; creditors are not mentioned.

5. ACT OF MARCH 2, 1812, STAT. 2, P. 691.—This act shows that the United States had no right to use a patent-right without the consent

of the inventor or owner, although the right was granted to the inventor by them. Sec. 1. "That the Secretary of the Treasury be and he is hereby authorized and empowered, under the direction of the President of the United States, to purchase of Winslow Lewis his patent-right to the plan of lighting light-houses by reflecting and magnifying lanterns, if the same shall prove to be a discovery made by him, and to contract with the said Winslow Lewis for fitting up and keeping in repair any and all light-houses in the United States or the Territories thereof, upon the new and improved plan of the reflecting and magnifying lanterns; or to contract with the said Lewis for such sum as he may think for the interest of the United States." The Government will not exercise its right of eminent domain for mere private persons. Congress have never conferred upon the courts the power to attach and sell patent-rights in favor of creditors, whether private or persons acting in a public capacity or quasi public.

6. THE ACT OF FEBRUARY 15, 1819, STAT. 3, PP. 481, 482.—"That the circuit courts of the United States shall have original cognizance as well in equity as at law of all actions, writs, controversies and cases arising under any law of the United States granting or confirming to authors or inventors the *exclusive right to their respective writings, inventions and discoveries*, and upon any bill in equity filed by any *party aggrieved* in such cases, shall have authority *to grant injunctions*, according to the course and principles of courts of equity, to prevent the violation of the rights of any authors or inventors secured to them by any laws of the United States on such terms and conditions as the said courts may deem fit and reasonable."

This act covers all the jurisdiction possessed by courts of law and of equity over patent and copyrights from 1819 until 1870, and it is the only jurisdiction possessed by said courts now. It is worthy of notice that the power here given to the courts is confined to protecting the rights of the patentee and not those of his creditors. A court cannot, under this authority, authorize the seizure and sale of the patent or copyright. The jurisdiction is to be used for the patentee, not against him. To take from him by decree or judgment, for debt, his right, would transcend the power conferred upon the court, and defeat the object of the Constitution and laws of the United States in that behalf. We will now give the last act on this subject:

7. STAT. 16, P. 206, JULY 8, 1870, SEC. 55.—"That all actions, writs, controversies and cases arising under the patent laws of the United States shall be originally cognizable, as well in equity as at law, by the circuit courts of the United States, or any district court having the powers and jurisdiction of a circuit court or by the Supreme Court of the District of Columbia, or of any Territory; and the court shall have power upon bill in equity, filed by any party aggrieved, to grant injunctions, according to the course and principles of courts of equity, *to prevent the* violation of any rights secured by patent on such terms as the court may deem reasonable; and upon a decree being rendered in any such case for an infringement the

claimant (complainant) shall be entitled to recover, in addition to the profits to be accounted for by the defendant, the damages the complainant has sustained thereby, and the court shall assess the same or cause the same to be assessed under its direction, and the court shall have the same powers to increase the same, in its discretion, that are given by this act to increase the damages found by verdicts in actions upon the case; but all actions shall be brought during the term for which the letters-patent shall be granted or extended, or within six years after the expiration thereof." This act confers upon courts of equity and law all the powers they now have relating to patent and copyrights. We notice the following points in this section of this act:

1. Any suit relating to a patent which can be brought at law can be brought in equity. That which cannot be brought at law cannot be brought in equity. A court of law cannot issue an execution to seize and sell a patent-right for debts of the inventor. If a court of law cannot do this under the law of 1870, a court of equity cannot. No such power is conferred by this act upon equity courts. We also call attention to the fact that the jurisdiction here given to the courts is in the express language of the statute to be used to protect those to whom patents and copyrights have been granted, not to aid creditors in depriving the patentee of his patented rights.

The statutes examined show the following:

1. That all laws granting patents have supremely in view the promoting of science and the useful arts in the United States.

2. That this is done by granting to the inventor or discoverer "*the sole and exclusive right* to construct, use and sell to those who may use the invention or discovery," formerly for fourteen years and now for seventeen years, that after said number of years the public may enjoy said invention or discovery free of charge.

3. As the statutes quoted show that though this right is granted by the Government, yet the Government claims no right to use the invention of a patentee without purchasing it from him. We find no instances where the Federal or State governments have exercised the right of selling for taxes, patent or copyrights.

4. Courts of equity have no power over patent and copyrights, excepting such as are conferred by statute.

5. The statute of 1870 gives courts no power to seize and sell a patent-right under a creditor's bill. They, therefore, possess no such power. The only way that we can find, in our researches upon this question, in which a patent right can be taken from the inventor or owner is "by a right akin to that of eminent domain, where a government may take personal property, whenever wanted for public use, upon making compensation therefor." But the Government will only do this when needed for the "*public use.*" It is the policy of the Government to encourage inventors, who are often men of very limited means and reduced to necessity, the "mother of invention," to keep their inventive powers at work, and by their skill and labor,

often after years of experiments, at last acquire a property in the result of their labors and hardships. Would this be done if, as soon as the patent-right was granted, a creditor of the inventor could, through the process of a court of equity, take it from him? *How could a value be set upon an invention?* Has the patent-right any locality for the jurisdiction of any court, excepting the Supreme Court?

OPINIONS OF COURTS.

1. Grant *vs.* Raymond, 6 Peters, p. 218. In this case the court say:

"To promote the progress of the useful arts is in the interest and policy of every enlightened government. It entered into the views of the framers of the Constitution, and the power to promote the progress of science and the useful arts is secured for a limited time to authors and inventors *by securing to them* their respective writings and discoveries. This power is among those expressly given to Congress. *It is reward* stipulated for advantages derived by the public from the exertions of individuals, to stimulate those exertions."

This is the opinion of this court:

"The great object and intention of the act granting patents for useful inventions is to secure to the public the advantages to be derived from the discoveries of individuals, and the means it employs are the compensation to those individuals for the time and labor devoted to those discoveries, by the *exclusive* right to make and sell the thing discovered for a limited time."

Again, if a creditor can seize and sell the patent-right as soon as it is granted, (and he can do it then if at any time,) then the object of the Constitution and of the laws of Congress is defeated, and the benefactor of mankind is left out in the cold. A great many of our most useful inventions would never come to light by the long series of experiments and skill and labor of the inventor.

Where would the *incentive* to invention be, if men were treated thus? Patent-rights are a privileged kind of incorporeal rights. But we proceed. In Stevens *vs.* Cady, 14 Howard, p. 529, the court say:

"A copyright is a property in notion, and has no corporeal, tangible substance, and cannot be seized and sold by execution. It can be reached by a creditor's bill in chancery; but in such a case the court would have to decree a transfer to be made, as provided in the act of Congress."

The following reasons may be assigned why the latter part of this extract, which refers to a court of equity, cannot have any force of law as a decision of the Supreme Court.

1. The question then before the court, as Judge Nelson concedes, was not whether a patent or copyright could be seized and sold under a decree in chancery. It was whether the plates for a map, which plates had been seized and sold under a judgment at law, carried with it the right and power to print the map from said plates and sell them. This question the court decides in the negative. The judge admits that all he says about doing through equity what could not be

done at law was nothing but *obiter dictum*. It was not in the case and not called for. It cannot, therefore, be relied upon as a decision in a case.

2. A "property in notion, having no tangible existence," can be attached by a court of equity if it has a locality, but in the case of a patent-right there is no locality, but a "*ubiquity throughout the Union*."

3. But a case may arise where a patentee or assignee has a particular district. In such a case the owner depends upon the Constitution, the law of 1870, *and his equities*.

4. It is admitted by Judge Nelson that if a patent or copyright were seized and sold under a decree in equity the marshal would possess no power to convey the patent or copyright, the law of Congress providing that nothing can be a conveyance of a patent or copyright but the written conveyance of the inventor or writer, or those authorized by him. He admits that the decree in equity would be of no value, unless it ordered the patentee to convey within a specified time. Under what law or authority given to courts by Congress can this be done? We have searched in vain for one.

5. If a court of equity commanded a patentee to convey and he refused, they must have power to punish for contempt. Under what law have they such power in such a case? We fail to find one. This case in 14 Howard was heard again by a full court, and was decided as follows by Judge Curtis: (Stevens *vs.* Glading, 17 Howard, p. 447:) "There would certainly be great difficulty in asserting that patent or copywrights held under the laws of the United States are subject to seizure and sale under execution." Not to repeat what was said in 14 Howard, it may be added that these incorporeal rights do not exist in any particular State or district. There is nothing in any act of Congress, or in the rights themselves, to give them locality anywhere, so as to subject them to powers of courts limited by the lines of States and districts. That an execution out of the court of common pleas for the county of Bristol, in the State of Massachusetts, can be levied upon an incorporeal right in Rhode Island or New York will hardly be pretended. That by the levy of such an execution the entire right could be divided, and so much of it as might be in the town of Bristol sold, would be a position subject to much difficulty."

The above is quite decisive; it shows—

1. That a patent or copyright is an incorporeal right.

2. It has no locality.

3. There is nothing in the acts of Congress or in the rights themselves to give them a locality anywhere, so as to subject them to the process of courts, limited by lines of States and districts.

4. An execution cannot be levied in any other State or district than that from which it issues.

5. An attempt to divide the right by judicial process would be subject to great difficulty.

6. It applies to courts of equity as well as law.

The decision shows that a court of equity was invoked in this case. The Supreme Court was asked to impose damages upon those who had violated the copyright of the author in this case. They refused to do this, upon the ground that all the right a court of equity possessed over a patent or copyright was given it by the law of the United States authorizing the issue of patents; and that said law did not confer upon them such power. On the contrary, the law provided that penalties for the violation of patent or copyrights should be collected by an action on the case at common law. Equity cannot, therefore, go beyond the law of Congress, granting powers in relation to patents and copyrights. Equity could protect the patentee in the future by decree, providing that so much should be paid by the purchase of the plates, for each and every copy printed from the plates, but could not impose penalties for the past. We will attempt further to show that these incorporeal rights cannot be made subject to the claim of a creditor by bill. In the decision of the Supreme Court of the United States in the case of Vaughan *vs.* Northorp, (15 Peters, p. 1,) the court said: "Debts due by the United States have no locality at the seat of Government. The United States, in their sovereign capacity, have no particular place of domicile, but possess in contemplation of law, an ubiquity throughout the Union."

We give, in addition to the above, what the eminent jurist Judge Marshall says in a Kentucky case in equity. (Cooper *vs.* Green, 4 B. Monroe, p. 596.) He says: "The author who has obtained a copyright under the acts of Congress cannot be deprived, against his will and in favor of his creditors, of any right secured to him by said acts." The apparatus can be seized and sold under execution, but this does not give the right to make, use and vend. The purchaser obtains the material of which the machine or other article is composed, and that is as far as he can go. The right itself is beyond the control of anybody, (but Congress,) and the owner or inventor. We now ask your indulgence to state what another eminent jurist, Judge Story, says in the case of Swain *vs.* Guild, 1 Gall, p. 485. His decision contains the following: "A patent or copyright granted by the United States is a contract between the Government, on the one side, and the inventor or author, to last for fourteen or seventeen years. The Government contracts that the inventor or author, his heirs and assigns, shall have the *sole and exclusive* right to construct, use, vend, convey, and cause to be used, printed, reprinted and vended, said invention or writing, and that the courts of the United States shall protect him therein against all who seek to deprive him of the right, whether at law or in equity. The inventor or author contracts upon his part that upon the condition that the law and the courts protect him in the *sole and exclusive* right conferred upon him at the end of the fourteen or seventeen years the entire invention or discovery shall belong to the people of the United States or any other country. Neither a court of law nor a court of equity can set aside such a contract made by the United States."

To seize and sell said invention for a debt of the inventor or owner at any time during these years, would be to set aside said contract.

Judge Curtis, in his great work on the law of patents, shows that public policy dictates the protection of the patentee in the rights conferred upon him by the Government.

It is a notorious fact that inventors are generally poor men. Poverty seems to be prerequisite to inventors. Fulton, Erickson, Arkright, Morse and Edison, as well as hundreds of minor inventors, were poor men when they made their inventions. It is not easy to estimate the benefits which the civilized world, and especially the United States have derived from patented inventions. If, however, it be true that as soon as a patent is issued it can be so subjected to seizure and sale for the debts of the inventor, there would soon be an end to inventors and new and useful inventions in the United States. The world would lose its greatest benefactors, and civilization and progress would be greatly retarded. Although an inventor should pay his debts as well as other persons, still we see the "*public policy*" in putting this right beyond the power of creditors to take it from the inventor.

That there is no injustice in giving inventors the protection they demand appears from the following facts:

1. Many millions of dollars have been paid by them to the Treasury for patents, that they might be protected in the enjoyment of the results of their own labor. No other kind of property has thus been taxed.

2. Inventors promote the progress of science and the useful arts as no other men do. Their unrewarded labors have added immensely to the value of all other property in the country. "The wilderness and the solitary places have been made glad by them, and the deserts to rejoice and blossom as the rose."

3. Who can estimate the value to the United States of the improved plow, the cultivator, the reaper, the raker, the binder, the mower, the steamboat, the steamship, the railroad, the telegraph, the telephone, the engine, and thousands of other minor inventions of the United States.

4. No nation of the earth equals the United States in new and useful inventions. This is, no doubt, owing to the encouragement our Constitution, laws and courts have given inventors by securing to them the sole and exclusive benefits of their inventions for a limited time.

It is to be hoped that all appeals to this court to put a stop to American inventions may fail.

5. If a patent-right be property in reality and not in *notion* only, as Judge Nelson said it was, then it does not receive from our laws the protection extended to all other property, real and personal. It should, at least, be equally protected; but it is not. Other property belongs to the owner thereof, his heirs and assignees forever, subject to debts. But the property of the inventor, after he has paid the

Government for a patent, belongs to him, his heirs and assignees for seventeen years only, subject during that time to his debts the same as other property. It cannot be that the Constitution of the United States and the laws of Congress were intended to discriminate thus against, instead of in favor of, these benefactors of mankind. This cannot be the *sole and exclusive* benefit contemplated by the Constitution and the laws. They must mean something else.

SPECIAL PRIVILEGES.

1. We are told that to grant the inventor exemption from debts would be a special privilege contrary to the spirit of our institutions. If this were true we would answer it by the statement that the inventor only is compelled to surrender to the public the fruits of his own labor after enjoying it for seventeen years. This applies to no other species of property in the United States.

2. But we deny that inventors enjoy privileges not granted to others. Public policy demands many other exemptions from debt, and our laws and this court allow them. The salary of the President of the United States, the salaries of Cabinet officers, of heads of departments, of bureaus, of their officers and clerks, of members of the House and of the Senate, as well as all other officers and clerks of both houses; of officers of the army and navy, are exempt from claims of creditors, as a matter of necessity. Under and according to the decision of this court in 15 Peters, those are debts due by the United States, and have, in "the contemplation of law, no locality at the capital of the nation, but have a ubiquity of existence throughout the Union." It may be a great hardship that a creditor of one of these officials cannot force its payment out of the salary of the officer; but such appears to be the fact, and public policy seems to demand it. The safety and the very existence of the Government may, under certain circumstances, require it. Especially is the pension of the soldier exempt, owing to the fact that he risks his life to save his country. These, and many others, are exemptions under United States laws.

3. In every State of the Union, laws exempting property of individuals from debt are common. In many of the Western and Southern States in particular, homesteads, without regard to their value, are exempt. In all States a certain amount of personal property is exempt. All lands entered under the homestead laws of the United States are exempt from debts of the owners and occupants. All these exemptions exist owing to a supposed benefit resulting to the public therefrom, which could not result if they did exist. Upon this ground we claim the exemption of patent and copyright. They benefit the public to a greater extent than any of the others named. Can it be possible that they shall be subject to the debts of the inventor or author, for the few years which the law allows them to receive compensation for them?

SURRENDERS IN BANKRUPTCY.

But we are told that Congress have enacted that patent and copyrights must be surrendered in bankruptcy. We admit this is found in the Revised Statutes, but it has no bearing upon this case, for the following reasons: 1. This act of Congress is a violation of the Constitution relating to authors and inventors. 2. Its effect is to prevent the progress of knowledge and the useful arts instead of to promote them. 3. The act relates solely to surrenders in bankruptcy, where proceedings are instituted in a court of the United States of proper jurisdiction. The case of Murray against Ager was not such a case. A surrender in bankruptcy is not prayed for. The seizure and sale of the patents of Ager, under a decree in equity, are the things prayed for.

The bankrupt law is repealed, and of course the acts relating to surrenders under the bankrupt act are now null and void.

We are not aware that any patent or copyright was ever surrendered in bankruptcy.

But if a surrender was made, what would become of the patent? Would the receiver sell and convey it? This he could not do without the consent of the inventor. Suppose he refused to surrender, what then? Would not the Constitution of the United States, the laws made thereunder, and the decision of this court justify the inventor in this refusal?

We hope this court, in their decision of this case, will settle the question in controversy, so that both creditors and inventors may hereafter know what their rights are.

WARWICK MARTIN,
Solicitor for Appellants.
T. T. CRITTENDEN,
of Counsel.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1881.

WILSON AGER AND ELISHA C. AGER, APPELLANTS, *vs.* TALBOT C. MURRAY, APPELLEE. } No. 1,034.

Appeal from the Supreme Court of the District of Columbia.

BRIEF FOR APPELLEE.

This was a bill brought by appellee, a judgment creditor of appellant, to subject the latter's interest in certain patent-rights to sale for the payment and satisfaction of his debt.

Appellant Wilson Ager in his answer admits the rendition of judgment against him, the return of execution thereon unsatisfied, and that he was the patentee and owner of certain inventions secured to him by letters-patent of the United States, for improvements in machines and processes for "decorticating" grain, described in the bill, but claimed that the rights secured to him by his patents cannot be sold in equity and the proceeds applied to the payment of his debts. This claim to exemption is based upon

that clause in the Constitution giving Congress power "to promote the progress of science and useful arts by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries."

The single question presented for review is, whether patent-rights, in view of the above provision of the Constitution, are exempt from seizure and sale under a creditor's bill, for the payment of the debts of the inventor.

The word *exclusive* in the constitutional provision referred to, can have no wider signification than protection to an author or inventor in the sense of infringement, upon the theory that he who first bestowed something useful upon society not known before, ought on principles of natural justice to be allowed for a limited time to make and use that thing to the exclusion of all others who would infringe his right. When the law does this it affords all the protection and encouragement contemplated by the Constitution. It certainly was never meant that an inventor, as to his patent-rights, should be exempt from paying his debts. Creditors have the same right to seize an inventor's patent-rights as a means for obtaining payment of their claims as they would have to seize his horse or any other piece of his propety. It seems to us impossible to frame an argument on any other theory. The argument that to subject patent-rights to the payment of the inventor's debts would be to discourage invention is fallacious,—it would be just as reasonable to say that to subject any other species of property to the payment of debts would discourage trade.

In deciding the case of *Stephens vs. Cady*, (14 How., 528,) which involved the question whether the sale of a copperplate for a map, on an execution against the owner of the copyright of the map, passed to the purchaser a right to use the copperplate to print the map, this court, speaking through Mr. Justice Nelson, said: "The copperplate engraving, like any other tangible personal property, is the subject of seizure and sale on execution and the title passes to the purchaser the same as if made at a private

sale. But the incorporeal right secured by the statute to the author, to multiply copies of the map by the use of the plate, being intangible, and resting altogether in grant, is not the subject of seizure or sale by means of this process (execution). Certainly not at common law. No doubt the property may be reached by a creditor's bill and be applied to the payment of the debts of the author, the same as stock of the debtor is reach and applied, the court compelling a transfer and sale of the stock for the benefit of the creditors.—(20 J. R., 554; 5 J. Ch., 280; S. C., 4 Ibid., 687; 1 Paige, 637.) But in case of such remedy, we suppose it would be necessary for the court to compel a transfer to the purchaser in conformity with the requirements of the copyright act."

Upon the analogy furnished by the case of Stephens vs. Cady, *supra*, the present bill was filed, and we submit that the suggestions thrown out in the opinion of the court in that case, though *obiter*, warrant the proceeding. There is nothing in the later case of *Stephens vs. Gladding*, (17 How., 450) which can be considered as in conflict with the language used in Stephens vs. Cady.

We think the law of the case is plain, and that appellants' argument *ab inconvenienti* is out of place. If the rights of an inventor be sold to satisfy the creditors, he obtains the benefit of the grant just as much as if he had sold it of his own motion. There is no doubt that he himself has the right voluntarily to sell and dispose of his patent-rights. On the death of an inventor his patent-rights pass as assets to his personal representative or legatee, like any other species of personal property. In the hands of the legatee the patent may be subjected to sale for the payment of his debts.

As long ago as 1803 it was held in England that, independent of any provision of the English bankrupt law, the right of the patentee of an invention would pass as assets to his assignee in bankruptcy.—(Hesse vs. Stevenson, 3 Bos. & Pul., 777.) Lord Alvanley, in delivering

the opinion of the court, said: "But if the inventor avail himself of his knowledge and skill, and thereby acquires a beneficial interest which may be the subject of assignment, I cannot frame to myself an argument why that interest should not pass in the same manner as any other property acquired by his personal industry. . . . We are, therefore, clearly of the opinion that the interest in letters-patent was an interest of such a nature as to be the subject of assignment by the commissioners in bankruptcy."

By our bankrupt law of 1867 it is declared that patent-rights and copyrights, together with other classes of property enumerated, shall be vested in the assignee of the bankrupt, and the assignee is authorized to sell all the estate of the bankrupt upon such terms as he thinks most for the interest of the creditors.

Again, the various acts of Congress on the subject of patents would seem to recognize patent-rights as property. It is provided in the act of 1870 that the deceased patentee's heirs, executors, administrators, and assigns shall succeed to his rights. Now, if it had been the intention of the framers of the Constitution that patent-rights should be exempt from liability for the debts of the inventor, Congress, we think, would have provided that the exclusive right to practice the invention should cease on the death of the inventor, as in the case of a pension.

In the court below counsel for appellant cited 1 Holmes, 152, 1 Gallison, 485, and 4 B. Monroe, 596, as supporting their position. The case in 1 Holmes, 152, decided merely that a trustee in insolvency, under the Massachusetts statute, had no title to a patent-right. The decision proceeded on the express language of the statute, which declares that only those species of property which could be seized on execution at law passed to the assignee. The case in 1 Gallison, 485, decides that a sheriff, who had sold under execution a number of patented machines for a debt due by the assignee, could not be held liable under that provi-

sion of the patent law which provides that the sale of patented machines, without the consent of the patentee, should subject the vendor to a suit for damages. The case in 4 B. Monroe, 596, held that where an author had transferred the copyright of his book to a trustee, for the benefit of his wife, in fraud of his creditors, a judgment recovered by the trustee against the purchaser of the copyright, for part of the purchase-money, could be subjected in equity to the payment of a judgment recovered by a creditor against the author. Those cases, we think, cannot be regarded as supporting the position of the appellant.

"If the contention on the part of the patentee in this case is correct," says the learned justice in delivering the opinion of the court below, "then it results that there may be a class of property in this country, yielding great revenues from royalties, which would be exonerated by this special exemption from responsibility which attaches to all other classes of property—payment of the honest debts of the debtor; and that one possessed of such patent-rights, by skillfully refusing to invest his revenues in any other description of property, may successfully baffle his creditors, though they may have supplied him with the very means which enabled him to achieve the success of his patent."

There is no error in the record, and the decree of the court below should be affirmed.

L. G. HINE,
S. T. THOMAS,
Counsel for Appellee.

15-132 R

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 156.

GEORGE C. RIVES, ADMINISTRATOR DE BONIS NON, &C., OF GEORGE RIVES, DECEASED, PLAINTIFF IN ERROR,

vs.

ANDREW J. FARISH, ADMINISTRATOR DE BONIS NON, &C., OF WILLIAM P. FARISH, DECEASED.

N ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF VIRGINIA.

FILED JANUARY 10, 1879.

SUPREME COURT OF THE UNITED STATES.

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1 UNITED STATES OF AMERICA,
Western District of Virginia, ss:

Pleas before the honorable Hugh L. Bond, judge of the circuit court of the United States for the western district of Virginia, in the fourth circuit, held at the court-room thereof in the city of Lynchburg, on Tuesday the 24th day of September, anno Domini one thousand eight hundred and seventy-eight, and in the year of the Independence of the United States the 103rd.

Be it remembered that heretofore, to wit, at rules held in the clerk's office of the said court on the first Monday in July, 1876, being the 6th day of the month:

Came Charles Edward Rives, executor of George Rives, deceased, by E. R. Watson, George Perkins, and W. W. Crump, gentlemen, his attorneys, and filed his declaration against Andrew J. Farish, administrator de bonis non, with will annexed of William P. Farish, deceased, of a plea of covenant broken; which declaration is in these words, to wit:

In the circuit court of the United States for the western district of Virginia, held at Lynchburg, western district of Va., to wit:

2 Charles Edward Rives, executor of George Rives, dec'd, a citizen of the State of New York, plaintiff, complains of Andrew J. Farish, administrator de bonis non, with the will annexed of William P. Farish, dec'd, defendant, a resident of the State of Virginia, resident in the county of Albemarle in said State, who has been duly summoned to answer of a plea of covenant broken; for this:

That heretofore, in the lifetime of the said George Rives, and in that also of the said William P. Farish, to wit, on the 5th day of December, 1863, in the county aforesaid, the said George Rives and one George L. Peyton made and entered into an agreement in writing, signed by the former as "Geo. Rives," and by the latter as "Geo. L. Peyton," sealed with their respective seals, and dated the said 5th day of December, 1863, by which the said Geo. Rives stated that he had on that day contracted to sell and to deliver on the place (meaning the farm in the county of Albemarle on which the said Geo. Rives then resided), on the 1st of January next (meaning the 1st of January, 1864), to the said Geo. L. Peyton, thirty-three negroes, the title to, but not the
3 soundness of which, the vendor warranted; and by said agreement the said Geo. L. Peyton agreed to pay to the said Geo. Rives for the same negroes, on the delivery thereof, the sum of twenty-five thousand dollars in bankable Confederate currency, and, in addition thereto, to give his note, with the said William P. Farish and one William H. Peyton as securities, for the further sum of twenty thousand dollars, to be paid in twelve months after call, in equal annual payments thereafter, or at said Peyton's option all or a part to be paid on call; and by the said agreement the said Geo. Rives covenanted that he would not call on said Peyton for specie when at a premium, in payment of the $20,000 aforesaid, but that he would be satisfied with the bankable currency of the day (meaning the day of payment according to the tenor and effect of the said agreement), on the stipulation that he should choose his own time for making the call for such payment; and by the writing aforesaid it was further agreed between the said Geo. Rives and Geo. L. Peyton that the said postponed payment of $20,000 should

carry interest from the 1st January, 1864, to be paid annually
4 at the Monticello Bank, meaning the bank of that name which was then doing business in the town of Charlottesville, in the county aforesaid, but which ceased to exist and to do business on the day of , 1865. And the plaintiff further avers that after the making of the agreement aforesaid of the 5th of December, 1863, to-wit, on the 1st day of January, 1864, and in pursuance of said agreement, the said Geo. Rives delivered to the said Geo. L. Peyton, on the farm aforesaid of the said Geo. Rives, which was the place referred to in said agreement, the thirty-three negroes mentioned therein, and the said Geo. L. Peyton then and there paid to the said Geo. Rives, in bankable Confederate currency, the said sum of twenty-five thousand dollars, being part of the purchase-money for the negroes aforesaid; and, in addition thereto, he, the said Geo. L. Peyton, for the remainder of the purchase-money for said negroes, viz, the said sum of $20,000, then and there, viz, on the said 1st day of January, 1864, in the county aforesaid, gave to the said Geo. Rives two bonds, with the said William P.
5 Farish and William H. Peyton as securities, one for the sum of eight thousand dollars and the other for the sum of twelve thousand dollars, which bonds were both dated on the said 1st day of January, 1864, were made, executed, and delivered by the said George L. Peyton, signing as "Geo. L. Peyton," the said William H. Peyton signing as "Wm. H. Peyton (as security)," and the said William P. Farish signing as "Wm. P. Farish (security)," were sealed with the respective seals of the said Geo. L. Peyton, Wm. H. Peyton, and William P. Farish, and were agreed upon by all of said parties and the said Geo. Rives, and given by the former and accepted by the latter, as a compliance with that clause in the agreement aforesaid of the 5th Dec'r, 1863, by which it was stipulated that the said Geo. L. Peyton, for the said sum of $20,000, should give his note, with Wm. P. Farish and Wm. H. Peyton as securities, for that sum, "to be paid in twelve months after call, in equal annual payments thereafter, or at said Peyton's option it may be, on call, all or a part paid." By one of the said bonds or writings, under seal, the said Geo. L. Peyton, Wm. H. Peyton, and Wm. P. Farish promised and covenanted with the said Geo. Rives to pay to him,
6 his heirs or assigns, on demand or twelve months thereafter, at the option of the obligors, in the bankable currency of the day, according to agreement of the 5th of December, 1863 (meaning the agreement of that date between the said Geo. Rives and Geo. L. Peyton hereinbefore set out), eight thousand dollars, with interest from the date of said writing, viz, the 1st of January, 1863, to be annually paid on 1st January, at Monticello Bank, Charlottesville, the same being in part of the purchase money for thirty-three negroes, the title whereof (it was stated in said writing) is warranted, but no warranty of soundness is made, meaning the same 33 negroes mentioned in the agreement aforesaid of the 5th Dec'r, 1863, between the said Geo. Rives and Geo. L. Peyton. And it was further stipulated in said bond that the demand for payment thereof should be made in writing by said Geo. Rives, his assigns or legal representatives, only. And by the other of said bonds or writings obligatory the said Geo. L. Peyton, Wm. H. Peyton, and Wm. P. Farish promised and covenanted, on demand or two years thereafter, at the option of the obligors, to pay,
7 in the bankable currency of the day, according to agreement of the 5th December, 1863 (meaning the agreement of that date between the said Geo. Rives and Geo. L. Peyton hereinbefore referred to), to the said Geo. Rives, his heirs or assigns, twelve thousand dollars,

with interest from date of said bond or writing obligatory, viz. the 1st day of January, 1864, to be annually paid on 1st January, at Monticello Bank, Charlottesville, the same being in part, and it was in fact, for the residue of the purchase money of the 33 negroes aforesaid, the title to, but not the soundness whereof, was warranted; and it was further stipulated in the said last-mentioned writing obligatory that the demand for payment thereof should be made in writing by the said George Rives, his assigns or legal representatives, only; and the plaintiff further avers that afterwards, in the lifetime of his testator, the said Geo. Rives, and of that also of the said William P. Farish, to wit, on the 28th day of August, 1866, the said George Rives made a demand in writing on the said William P. Farish for payment of both of the writ-
ings obligatory aforesaid, viz. for payment of the principal and
8 arrears of interest due thereon; that the said Geo. Rives, on the 22nd August, 1866, and again on the 30th of August, 1866, made a like demand in writing for payment of the same on the said Geo. L. Peyton and Wm. H. Peyton, and the said Geo. Rives did not in said demands, or in either of them, or at any other time, call upon said parties, or any or either of them, for specie; and the plaintiff further avers that both the said George Rives and the said William P. Farish survived more than two years after the making of the demands aforesaid by the said George Rives, and afterwards, and before the institution of this suit both of them died, that is to say, the said William P. Farish died in 1869, and the said George Rives died in 1874. Nevertheless, the plaintiff further avers that with the exception of the interest for one year on both of said bonds, which fell due on the 1st of January, 1865, and which was then paid, no part of the principal or interest of said two bonds or writings obligatory aforesaid, or of either of them, has ever been paid, at any time, or at any place, or in any currency, or in any manner whatever, either to the said Geo. Rives, in his lifetime, or to the plaintiff, his executor, or to any other person authorized to re-
ceive the same, since his death, by the said Geo. L. Peyton,
9 Wm. H. Peyton, and Wm. P. Parish, or any or either of them, in the lifetime of the said Wm. P. Parish, or since his death, by the said Geo. L. Peyton and Wm. H. Peyton, or either of them, or by the defendant, adm'r de bonis non, with the will annexed, of Wm. P. Farish, dec'd, or by any former representative of said decedent, or by any other person whatever; but with the exception aforesaid the entire principal and interest of both of the two bonds or writings obligatory aforesaid remain wholly unpaid, and in no manner discharged or satisfied.

SECOND COUNT.

And for this also, that heretofore, to wit, on the 5th day of December, 1863, and in the lifetime of the plaintiff's intestate, and of the said William P. Farish, in the county of Albemarle, and in the western district aforesaid, the said George Rives and a certain Geo. L. Peyton made, signed, and sealed a certain other agreement in writing in the following words and figures, to wit:

"*List of serv'ts sold to Geo. L. Peyton.*

	age.				
Jno.	49	Abraham	46	George	36
Sally	39	Mary	34	Lucy	31
Charles	19	Randel	13	Mariah	12

10	Nelly	16	Lewis.....	8	Sheamonia 8
	Albert.....	13	Silas.....	6	Mis 6
Mildred	9	James	4	Fonzo.....	51
Rebecca.....	7	Abraham, inf't ...		Patsey	51
Isaah	5	"		"	
Phil.....	2	Julia.....	27	Emma	35
Sarah, inf't.....		Tom	6	Mary	13
James	3	Evelina.....	7	Sam	1
Martha.....	5	Agnes.....	3		

"I have this day contracted to sell & deliver on the place, on the 1st of Jan'y next, to Geo. L. Peyton, the above list of negroes, thirty-three in number, the title thereto I warrant, but make no warranty of soundness. For the same negroes the said Geo. L. Peyton agrees to pay on delivery the sum of twenty-five thousand dollars in bankable Confederate currency, &c.; in addition, to give his note, with Wm. P. Farish and Wm. H. Peyton as securities, for the further sum of twenty thousand dollars, to be paid in twelve months after call, in equal annual payments thereafter, or at s'd Peyton's option it may be, on call, all or a part paid. The s'd Geo. Rives covenants he will not call on s'd Peyton for specie when it is at a premium, but engaging on his part to be satisfied with the bankable currency of the day, on the stipulation
11 to choose his own time for the call. The s'd postponed payment to carry interest from 1st Jan. next, & to be annually paid at Monticello Bank. The s'd Geo. Rives further engages to furnish s'd Peyton 100 brls. of corn, at $20 pr. brl., to be delivered on the place as soon as gathered, & the money therefor to be paid down in Confederate bankable currency. In witness whereof, & mutual obligation to perform our respective engagements, we, this 5th of Dec., 1863, have signed our hands & seals.

"GEO. RIVES. [s. c.]
"GEO. L. PEYTON. [s. c.]"

And the plaintiff further avers that after the making of the agreement aforesaid, to wit, on the 1st day of January, 1864, and in pursuance of said agreement, the said Geo. Rives delivered to the said Geo. L. Peyton the thirty-three negroes mentioned in said agreement "on the place," that is to say, on the farm, in the said county of Albemarle, on which the said Geo. Rives then resided, which was the place of delivery referred to in the agreement aforesaid. And the plaintiff further avers that after the making of said agreement, at the time and place intended thereby, that is to say, on the farm aforesaid,
12 and on the day of , in the year , the said Geo. Rives, in pursuance of said agreement, delivered to the said Geo. L. Peyton 100 barrels of corn. And the plaintiff further says that after the making of the agreement aforesaid, viz. on the 1st day of January, 1864, the said Geo. L. Peyton, upon the delivery to him as aforesaid of the 33 slaves referred to in said agreement, paid to the said Geo. Rives, in bankable Confederate currency, $25,000, in part of the purchase money contracted to be paid for said slaves, and in addition thereto he at the same time gave to the said Geo. Rives, not his note, with Wm. P. Farish and Wm. H. Peyton as securities, for $20,000, payable as specified in the agreement aforesaid of the 5th Dec'r, 1863, but in lieu thereof his two bonds or writings obligatory, with the said Wm. P. Farish and Wm. H. Peyton as securities, amounting in the aggregate to the said sum of $20,000, one of which is in the words and figures following, viz:

"$8,000.]

"On demand or twelve months thereafter, at the option of the obligors, we promise to pay, in the bankable currency of the day (ac-
13 cording to agreement of the 5 Dec'r, last), to George Rives, his heirs or assigns, eight thousand dollars, with interest from date, to be annually paid on 1st January, at Monticello Bank, Charlottesville. The same being in part of the purchase money for thirty-three negroes, the title whereof is warranted, but no warranty is made of soundness. The said demand shall be made in writing by said George Rives, his heirs or legal representatives, only. In witness whereof we have hereto put our hands & seals this 1st day of January, 1864.

"GEO. L. PEYTON. [SEAL.]
"WM. H. PEYTON (as security). [SEAL.]
"WM. P. FARISH (security). [SEAL.]"

And the other of which bonds or writings obligatory is in the words and figures following, to wit:

"$12,000.]

"On demand or two years thereafter, at the option of the obligors, we promise to pay, in the bankable currency of the day (according to agreement of the 5th Dec'r last), to George Rives, his heirs or assigns, twelve thousand dollars, with interest from date, to be annually paid on 1st January, at Monticello Bank, Charlottesville. The same being in part of the purchase money for thirty-three negroes, the title whereof is warranted, but no warranty is made of soundness. The said de-
14 mand shall be made in writing by said George Rives, his assigns or legal representatives, only. In witness whereof we have hereto put our hands & seals this 1st day of January, 1864.

"GEO. L. PEYTON. [SEAL.]
"WM. H. PEYTON (as security.) [SEAL.]
"WM. P. FARISH (security). [SEAL.]"

Which two bonds or writings obligatory were made, signed, sealed, and delivered by the obligors therein, and accepted by the said George Rives, as a compliance on the part of the said George L. Peyton, with that provision in the agreement aforesaid of the 5th Dec'r, 1863, by which he bound himself to give to the said Geo. Rives, "his note, with Wm. P. Farish and Wm. H. Peyton as securities, for the further sum of twenty thousand dollars, to be paid in twelve months after call, in equal annual payments thereafter, or at s'd Peyton's option it may be, on call, all or a part paid."

And the plaintiff further avers that more than two years before the institution of this suit his intestate, the said George Rives, made demand in writing for payment of the principal and arrears of interest of the two bonds or writings obligatory aforesaid, on the obligors therein.
That is to say, he made such demand on the said Geo. L. Pey-
15 ton and Wm. H. Peyton on the 22nd August, 1866; on the 28th of August, 1866, on the defendant's intestate, the said Wm. P. Farish; and again on the 30th of August, 1866, on the said Geo. L. and Wm. H. Peyton. And neither the said Geo. Rives in his lifetime nor the plaintiff since his death has ever called upon the obligors aforesaid, or any of them, or upon the def't, for specie in payment of the bonds afores'd, or either of them or any part thereof. The said Wm. P. Farish died on the 29th October, 1869, and the defendant, Andrew J. Farish, is, and at the commencement of this suit was, his sole administrator de bonis non, with the will annexed, and the said George Rives died on the day of , 1874, and the plaintiff is, and at the time of the com-

mencement of this suit was, his sole executor. Nevertheless, the plaintiff further avers that with the exception of the interest for one year on the two bonds aforesaid, which fell due on the 1st day of January, 1865, and which was paid, no part of the principal or interest of said bonds, or either of them, has ever been paid at any time or place, or in any manner whatever, either to the said George Rives in his lifetime, or to the plaintiff, his executor, or to any other person authorized
16 to receive the same since his death, either by the said Geo. L. Peyton, Wm. H. Peyton, and Wm. P. Farish, or any or either of them in the lifetime of the latter, or by the said Geo. L. Peyton and Wm. H. Peyton, surviving obligors', or either of them, or by the defendant admr de bonis non, with the will annexed, of the said Wm. P. Farish, or by any other person whatever since the death of the said Wm. P. Farish. But the entire principal of, and all the interest which has accrued upon, the two bonds aforesaid, with the exception of the one year's interest hereinbefore mentioned, remain unpaid, and in no manner nor to any extent satisfied or discharged.

And so the plaintiff avers that altho' the said Geo. Rives, in his lifetime, and the plaintiff, his executor, since his death, have well and truly fulfilled, kept, and performed all things which on the part of the said George Rives were by the terms of the agreements and covenants aforesaid, according to the true intent and meaning thereof, to be fulfilled, kept, and performed, yet the plaintiff avers that the said Geo. L. Peyton, Wm. H. Peyton, and William P. Farish have not kept their covenants and agreements aforesaid, but all of said parties, in
17 the lifetime of Wm. P. Farish and the said Geo. L. Peyton and William H. Peyton, and the said defendant, as adm'r d. b. n. c. t. a. of the said Wm. P. Farish, dec'd, and all others who have acted as personal representatives of said decedent since his death, have hitherto broken and wholly refused to keep the same, as well in the lifetime of said Geo. Rives as since his death; and the said Geo. L. Peyton and Wm. H. Peyton, and the defendant adm'r as aforesaid, still refuse to keep the same, to the damage of the plaintiff of $35,000, and therefore he sues.

WATSON & PERKINS, *p. q.*

Whereupon came also the defendant, by William J. Robertson, S. V. Southall, R. T. W. Duke, sr., and R. T. W. Duke, jr., gentlemen, his attorneys, and the defendant says that the declaration and each count thereof is not sufficient in law.

1ST PLEA.

And the said defendant, for a plea in this behalf, says that the said Wm. P. Farish hath in his lifetime well and truly observed and performed the conditions of the writings obligatory in the declaration mentioned, and each and every one of them; and the said defendant, A. J. Farish, adm'r aforesaid, hath since the death of the said Wm. P. Farish well and truly observed and performed the conditions of the
18 writings obligatory in the declaration mentioned, and each and every one of them, and of this he puts himself upon the country.

2ND PLEA.

The said defendant, for a further plea in this behalf, says that the said Wm. P. Farish in his lifetime hath not broken his covenants in

manner and form as the plaintiff against him hath complained; nor hath the said defendant since the death of the said Wm. P. Farish broken the said covenants in manner and form as the plaintiff against him complained, and of this he puts himself upon the country.

3RD PLEA.

And the said defendant, for a further plea, says that the supposed writings obligatory, and each of them, in the plaintiff's declaration mentioned were executed by the said George L. Peyton, as principal, and by the said William H. Peyton and the said William P. Farish, as his sureties, in consideration of part of the price of thirty-three negroes which the plaintiff's testator, George Rives, on the 5th day of December, in the year of our Lord 1863, contracted to sell, and on the 1 day of January, in the year of our Lord 1864, did sell and deliver, to the said George L. Peyton, with warranty of title as slaves; that on the 22 day of September, in the year of our Lord 1862, the President of the United States issued a proclamation, of which a substantial copy
19 is herewith filed as a part of this plea, marked (No. 1), which is in the words and figures following, to wit:

Sept. 22, 1862. "By the President of the United States of America:

"A PROCLAMATION.

"I, Abraham Lincoln, President of the United States of America, and Commander-in Chief of the Army and Navy thereof, do hereby proclaim and declare that hereafter, as heretofore, the war will be prosecuted for the object of practically restoring the constitutional relation between the United States and each of the States, and the people thereof, in which States that relation is or may be suspended or disturbed.

"That it is my purpose, upon the next meeting of Compress, to again recommend the adoption of a practical measure tending pecuniary aid to the free acceptance or rejection of all slave States, so called, the people whereof may not then be in rebellion against the United States, and which States may then have voluntarily adopted or thereafter may voluntarily adopt immediate or gradual abolishment of slavery within their respective limits; and that the effort to colonize persons of African descent, with their consent, upon this continent or elsewhere, with the previously obtained consent of the governments existing there, will be continued. That on the first day of January, in the year of our Lord
20 one thousand eight hundred and sixty-three, all persons held as slaves within any State or designated part of a State the people whereof shall then be in rebellion against the United States shall be thenceforward and forever free; and the executive Government of the United States, including the military and naval authority thereof, will recognize and maintain the freedom of such persons and will do no act or acts to repress such persons or any of them in any efforts they may make for their actual freedom.

"That the Executive will, on the first day of January aforesaid, by proclamation, designate the States and parts of States, if any, in which the people thereof, respectively, shall then be in rebellion against the United States; and the fact that any State, or the people thereof, shall on that day be in good faith represented in the Congress of the United States, by members chosen thereto at elections wherein a majority of the qualified voters of such State shall have participated, shall, in the ab-

sence of strong countervailing testimony, be deemed conclusive evidence that such State, and the people thereof, are not then in rebellion against the United States.

"That attention is hereby called to an act of Congress entitled 'An act to make an additional Article of War,' approved March 13th,
21 1862, and which act is in the words and figures following:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter the following shall be promulgated as an additional Article of War, for the government of the Army of the United States, and shall be obeyed and observed as such:

"ARTICLE —. All officers or persons in the military or naval service of the United States are prohibited from employing any of the funds under their respective commands for the purpose of returning fugitives from se'vice or labor who may have escaped from any persons to whom such service or labor is claimed to be *to be* due, & any officer who shall be found guilty by a court-martial of violating this article shall be dismissed from the service.

"SEC. 2. And be it further enacted, That this act shall take effect from and after its passage.

"Also to the ninth and tenth sections of an act entitled 'An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate property of rebels, and for other purposes,' approved July 17th, 1862, and which sections are in the words and figures following:

"SEC. 9. And be it further enacted, That all slaves of persons
22 who shall hereafter be engaged in rebellion against the Government of the United States, or who shall in any way give aid or comfort thereto, escaping from such persons and taking refuge within the lines of the Army; and all slaves captured from such persons or deserted by them, and coming under the control of the Government of the United States; and all slaves of such persons found on [or] being within any place occupied by rebel forces and afterwards occupied by the forces of the United States, shall be deemed captives of war, and shall be forever free of their servitude, and not again held as slaves.

"SEC. 10. And be it further enacted, That no slave escaping into any State, Territory, or the District of Columbia, from any other State, shall be delivered up, or in any way impeded or hindered of his liberty, except for crime or some offence against the laws, unless the person claiming such fugitive shall first make oath that the person to whom the labor or service of such fugitive is alleged to be due is his lawful owner, and has not borne arms against the United States in the present rebellion, nor in any way given aid and comfort thereto; and no person engaged in the military or naval services of the United States shall under any pretence whatever assume to decide on the validity of the claim of any person to the service or labor of any other person, or surrender
23 up any such person to the claimant, on pain of being dismissed from the service."

"And I do hereby enjoin upon and order all persons engaged in the military and naval service of the United States to observe, obey, and enforce within their respective spheres of service the act and sections above recited.

"And the Executive will in due time recommend that all citizens of the United States who shall have remained loyal thereto throughout the rebellion shall (upon the restoration of the constitutional relation between the United States and their respective States and people, if that relation shall have been suspended or obstructed) be compensated

for all losses by acts of the United States, including the loss of slaves. In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

"Done at the city of Washington this 22 d day of September, in the year of our Lord one thousand eight hundred and sixty-two, and of the Independence of the United States the eighty-seventh.

[L. S.] "ABRAHAM LINCOLN.

"By the President:

"WILLIAM H. SEWARD,

"*Secretary of State.*"

That on the 1st day of January, in the year of our Lord 1863,
24 the President of the United States issued another proclamation, of which a substantial copy is filed, as a part of this plea, marked (No. 2), which is in the words and figures following, to wit:

"By the President of the United States of America.

"A PROCLAMATION.

"Whereas on the twenty-second day of September, in the year of our Lord one thousand eight hundred and sixty-two, a proclamation was issued by the President of the United States containing amongst other things the following, to wit:

"That on the first day of January, in the year of our Lord one thousand eight hundred and sixty-three, all persons held as slaves within any State or designated part of a State the people whereof shall then be in rebellion against the United States shall be then, thenceforward, and forever free; and the executive Government of the United States, including the military and naval authority thereof, will recognize and maintain the freedom of such persons and will do no act or acts to repress such persons or any of them in any efforts they may make for their actual freedom.

"That the Executive will, on the first day of January aforesaid, by proclamation, designate the States and parts of States, if any,
25 in which the people thereof respectively shall then be in rebellion against the United States, and the fact that any State or the people thereof shall on that day be in good faith represented in the Congress of the United States by members chosen thereto at elections wherein a majority of the qualified voters of such States shall have participated shall, in the absence of strong countervailing testimony, be deemed conclusive evidence that such State and the people thereof are not then in rebellion against the United States.

"Now, therefore, I, Abraham Lincoln, President of the United States, by virtue of the power in me vested as Commander-in-Chief of the Army and Navy of the United States in time of actual armed rebellion against the authority and Government of the United States, and as a fit and necessary war measure for suppressing said rebellion, do, on this first day of January, in the year of our Lord one thousand eight hundred and sixty-three, an' in accordance with my purpose so to do, publicly proclaim, for the full period of one hundred days from the day first above mentioned, order, and designate as the States and parts of States wherein the people thereof respectively are this day in rebellion against the United States the following, to wit:

26 "Arkansas, Texas, Louisiana (except the parishes of St. Bernard, Plaquemines, St. John, St. Charles, St. James, Ascension,

Assumption, Terre Bonne, Lafourche, St. Mary, St. Martin, and Orleans, including the city of New Orleans), Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, and Virginia (except the forty-eight counties designated as West Virginia, and also the counties of Berkeley, Accomac, Northampton, Elizabeth City, York, Princess Anne, and Norfolk, including the cities of Norfolk and Portsmouth), and which excepted parts are for the present left precisely as if this proclamation were not issued.

"And by virtue of the power, and for the purpose aforesaid, I do order and declare that all persons held as slaves within said designated States and parts of States are and henceforward shall be free, and that the executive Government of the United States, including the military and naval authorities thereof, will recognize and maintain the freedom of said persons. And I hereby enjoin upon the people so declared to be free to abstain from all violence unless in necessary self-defence, and I recommend to them that in all cases when allowed they labor faithfully for reasonable wages.

27 "And I further declare and make known that such persons of suitable conditions will be received into the armed service of the United to garrison forts, positions, stations, and other places, and to man vessels of all sorts and in said service.

"And upon this act, sincerely believed to be an act of justice warranted by the Constitution upon military necessity, I invoke the considerate judgment of mankind and the gracious favors of Almighty God.

"In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

"Done at the city of Washington this first day of January, in the year of our Lord one thousand eight hundred and sixty-three, and of the Independence of the United States of America the eighty-seventh.

[L. S.] "ABRAHAM LINCOLN.

"By the President:

"WILLIAM H. SEWARD,
Secretary of State."

That on the first day of January, in the year of our Lord 1863, and from that time until and after the sale and delivery of the said negroes, both the said plaintiff's testator, the said George Rives, and the said George L. Peyton, were participants in the then existing rebellion

28 against the United States, and they and the said thirty-three negroes were residents of Albemarle County, in the State of Virginia, which said county and State were embraced and included in the States and parts of States ordered and designated in the said proclamation of the President of the United States of the 1 day of January, in the year of our Lord 1863, as the States and parts of States wherein the people thereof respectively were, on said 1st day of January, in the year of our Lord 1863, in rebellion against the United States, and that said negroes, contracted to be sold and sold and delivered by the plaintiff's testator, the said Geo. Rives, to the said George L. Peyton, as aforesaid, in consideration of part of the price of which said supposed writings obligatory in the plaintiff's declaration mentioned were, and each of them was, executed, were on said 1 day of January, in the year of our Lord 1863, persons held as slaves within the said county of Albemarle, in the said State of Virginia, and were by said proclamation of the President of the United States of the 1 day of January, in the year of our Lord 1863, ordered and declared to be thenceforward free. And the

defendant says that by reason of said premises the said thirty-three negroes were, at the time of the said contract, sale, and delivery by the
29 plaintiff's testator, the said Geo. Rives, to the said George L. Peyton, free persons, and this he is ready to verify. Wherefore he prays judgment if the plaintiff ought to have or maintain his aforesaid action thereof against him.

4TH PLEA.

And the defendant, for a further plea, says that the supposed writings obligatory, and each of them, in the plaintiff's declaration mentioned, were executed by the said George L. Peyton as principal, and by the said William H. Peyton and the said William P. Farish as his sureties, in consideration of part of the price of thirty-three negroes which the plaintiff's testator, the said George Rives, on the 5 day of December, in the year of our Lord 1863, contracted to sell, and on the 1 day of January, in the year our Lord 1864, did sell and deliver, to the said George L. Peyton, with warranty of title as slaves. That on the 22 day of September, 1862, the President of the United States issued a proclamation, a substantial copy of which is herewith filed as a part of this plea, marked (No. 1). [The paper referred to has already been copied in plea No. 3.] That on the 1 day of January, in the year of our Lord 1863, the President of the United States issued another
30 proclamation, of which a substantial copy is herewith filed as a part of this plea, marked (No. 2). [The paper referred to has already been copied in plea No. 3.] That on the 1 day of January, in the year of our Lord 1863, and from that time until and after the sale and delivery of the said negroes, both the said plaintiff's testator and the said George L. Peyton were participants in the then existing rebellion against the United States, and they and the said thirty-three negroes were residents of Albemarle County, in the State of Virginia, which said county and State were embraced and included in the States and parts of States ordered and designated in the said proclamation of the President of the United States of the 1st day of January, in the year of our Lord 1863, as the States and parts of States wherein the people thereof respectively were, on said 1 day of January, in the year of our Lord 1863, in rebellion against the United States, and that said negroes contracted to be sold and sold and delivered by the plaintiff's testator, Geo. Rives, to the said George L. Peyton, as aforesaid, in consideration of part of the price of which said supposed writings obligatory in the plaintiff's declaration mentioned were, and each of them was, executed, were on said 1 day of January, in the year of our Lord 1863, per-
31 sons held as slaves within the said county of Albemarle, in the said State of Virginia, and were by said proclamation of the President of the United States of the 1 day of January, in the year of our Lord 1863, ordered and declared to be thenceforward free. And the defendant says that, by reason of said premises, the said thirty-three negroes were, at the time of said contract, sale, and delivery by the plaintiff's testator, the said Geo. Rives, to the said George L. Peyton, free persons. And so the warranty of title in the said writings obligatory set forth was broken, and this he is ready to verify. Wherefore, the said defendant says that if he had paid and satisfied the said writings obligatory, he would be entitled to recover damages from the plaintiff by reason of the matters herein pleaded, and such damages would be to the whole amount of the said writings obligatory, and the said writings obligatory not having been paid or satisfied, this defendant says that he is entitled to relief against the obligation of the contracts upon him, in whole and for the whole amount of the said writings obligatory.

5TH PLEA.

And the said defendant, for a further plea, says that the supposed writings obligatory, and each of them, in the plaintiff's
32 declaration mentioned were executed by the said George L. Peyton as principal, and by the said William H. Peyton and the said William P. Farish as his sureties, in consideration of part of the price of thirty-three negroes which the said testator, the said George Rives, on the 5 day of December, in the year of our Lord 1863, contracted to sell, and on the 1 day of January, in the year of our Lord 1864, did sell and deliver, to the said George L. Peyton, with warranty of title as slaves.

That on the 22 day of September, in the year of our Lord 1862, the President of the United States issued a proclamation, of which a substanti l copy is herewith filed as a part of this plea, marked (No. 1). [The paper referred to has already been copied in plea No. 3.]

That on the 1 day of January, in the year of our Lord 1863, the President of the United States issued another proclamation, of which a substantial copy is herewith filed as a part of this plea, marked (No. 2). [The paper referred to has already been copied in plea No. 3.]

That on the 1 day of January, in the year of our Lord 1863, and from that time until and after the sale and delivery of the said negroes, both the said plaintiff's testator, the said Geo. Rives, and the said George L. Peyton were participants in the then existing rebellion against
33 the United States, and they and the said thirty-three negroes were residents of Albemarle County, in the State of Virginia, which said county and State were embraced and included in the States and parts of States ordered and designated in the said proclamation of the President of the United States of the 1 day of January, in the year of our Lord 1863, as the States and parts of States wherein the people thereof respectively were, on said 1 day of January, in the year of our Lord 1863, in rebellion against the United States; and that said negroes contracted to be sold and sold and delivered by the plaintiff's testator, the said Geo. Rives, to the said George L. Peyton, as aforesaid, in consideration of part of the price of which said supposed writings obligatory in the plaintiff's declaration mentioned were, and each of them was, executed, were on said 1 day January, in the year of our Lord 1863, persons held as slaves, within said county of Albemarle, in the said State of Virginia, and were by said proclamation of the President of the United States of the 1 day of January, in the year of our Lord 1863, ordered and declared to be thenceforward free. And the defendant says that by reason of said premises the said thirty three negroes were, at the time of said contract, sale, and delivery by the plaintiff's testator, the said Geo. Rives, to the said George L. Peyton, free per-
34 sons, and so the consideration of the said writings obligatory wholly failed. And this he is ready to verify. Wherefore the said defendant says that if he had paid and satisfied the said writings obligatory, he would be entitled to recover damages from the plaintiff by reason of the matters herein pleaded, and such damages would be to the whole amount of the said writings obligatory; and the said writings obligatory not having been paid or satisfied, this defendant says that he is entitled to relief against the obligation of the contracts upon him in whole and for the whole amount of the said writing obligatory.

6TH PLEA.

And the said defendant, for a further plea, says that the supposed writings obligatory, and each of them, in the plaintiff's declaration mentioned were executed by the said George L. Peyton as principal, and by the said William H. Peyton and the said William P. Farish as his sureties, in consideration of part of the price of thirty-three negroes which the plaintiff's testator, the said Geo. Rives, on the 5 day of December, in the year of our Lord 1863, contracted to sell, and on the 1 day of January, in the year of our Lord 1864, did sell and deliver, to the said George L. Peyton, with warranty of title as slaves. That on
35 the 22d day of September, in the year of our Lord 1862, the President of the United States issued a proclamation, of which a substantial copy is herewith filed as a part of this plea, marked (No. 1). [The paper referred to has already been copied in plea No. 3.] That on the 1 day of January, in the year of our Lord 1863, the President of the United States issued another proclamation, of which a substantial copy is herewith filed as a part of this plea, marked (No. 2). [The paper referred to has already been copied in *in* plea No. 3.] That on the 1 day of January, in the year of our Lord 1863, and from that time until and after the sale and delivery of the said negroes, both the said plaintiff's testator, the said Geo. L. Rives, and the said George L. Peyton were participants in the then existing rebellion against the United States, and they and the said thirty three negroes were residents of Albemarle County, in the State of Virginia, which said county and State were embraced and included in the States and parts of States ordered and designated in the said proclamation of the President of the United States of the 1st day of January, in the year of our Lord 1863; as the States and parts of States wherein the people thereof respectively were on the said 1st day of January, in the year of our Lord 1863, in rebellion against the United States, and that said negroes contracted to be sold and sold and delivered by the plaintiff's testator, the said
36 Geo. Rives, to the said George L. Peyton, as aforesaid, in consideration of part of the price of which said supposed writings obligatory in the plaintiff's declaration mentioned were, and each of them was, executed, were, on said 1st day of January, in the year of our Lord 1863, persons held as slaves within the said county of Albemarle, in the said State of Virginia, and were by said proclamation of the President of the United States of the 1st day of January, in the year of our Lord 1863, ordered and declared to be thenceforward free. And the defendant says that by reason of said premises the said thirty-three negroes were, at the time of said contract, sale, and delivery by the plaintiff's testator, the said Geo. Rives, to the said George L. Peyton, free persons, and prior to the making of the demand in writing provided for by the writings obligatory, to wit, on the day of , in the year of our Lord 1865, the rights of said negroes, and of each of them, as free persons, as aforesaid, were recognized, maintained, and enforced by the Government and sovereign authority of the United States, and said negroes have, and each of them hath, ever since said day of , in the year of our Lord 1865, and hitherto, actually and in fact possessed and exercised, and they do, and each of them doth, still posess and exercise, all the rights, privileges, and immunities of free persons. And
this the said defendant is ready to verify. Wherefore he prays
37 judgment if the plaintiff ought to have or maintain his aforesaid action thereof against him.

7TH PLEA.

And the said defendant, for a further plea, says, that the supposed writings obligatory, and each of them, in the plaintiff's declaration mentioned were executed by the said George L. Peyton, as principal, and by the said William H. Peyton and the said William P. Farish as his sureties, in consideration of part of the price of thirty-three negroes which the plaintiff's testator, Geo. Rives, on the 5 day of December, in the year of our Lord 1863, contracted to sell, and on the 1 day of January, in the year of our Lord 1864, did sell and deliver, to the George L. Peyton, with warranty of title as slaves.

That on the 22 day of September, in the year of our Lord 1862, the President of the United States issued a proclamation, a substantial copy of which is filed as a part of this plea, marked *marked* (No. 1). [The paper referred to has already been copied in plea No. 3.] That on the 1 day of January, in the year of our Lord 1863, the President of the United States issued another proclamation, of which a substantial copy is herewith filed as a part of this plea, marked (No. 2). [The paper referred to has already been copied in plea No. 3.] That on the 1 day of

38 January, in the year of our Lord 1863, and from that time and until and after the sale and delivery of the said negroes, both the said plaintiff's testator, the said Geo. Rives, and the said George L. Peyton were participants in the then existing rebellion against the United States, and they and the said thirty-three negroes were residents of Albemarle County, in the State of Virginia, which said county and State were embraced and included in the States and parts of States ordered and designated in the said proclamation of the President of the United States of the 1 day of January, in the year of our Lord 1863, as the States and parts of States wherein the people thereof respectively were, on said 1 day of January, in the year of our Lord 1863, in rebellion against the United States, and that said negroes contracted to be sold and sold and delivered by the plaintiff's testator, the said Geo. Rives, to the said George L. Peyton, as aforesaid, in consideration of part of the price of which said supposed writings obligatory in the plaintiff's declaration mentioned were, and each of them was, executed, were, on said 1st day of January, in the year of our Lord 1863, persons held as slaves within the said county of Albemarle, in the State of Virginia, and were by said proclamation of the President of the United States of the 1 day of January, in the year of our Lord 1863, ordered and declared to be thenceforward free. And the defendant says that by reason of said prem-

39 ises the said thirty-three negroes were, at the time of the said contract, sale, and delivery by the plaintiff's testator, the said Geo. Rives, to the said George L. Peyton, free persons, and prior to the making of the demand in writing provided for by the writings obligatory, to wit, on the day of in the year of our Lord 1865, the rights of said negroes, and of each of them, as free persons as aforesaid were recognized, maintained, and enforced by the Government and sovereign authority of the United States, and said negroes have, and each of them hath, ever since said day of , in the year of our Lord 1865, and hitherto, actually and in fact possessed and exercised, and they do, and each of them doth still possess and exercise all the rights, privileges, and immunities of free persons, and so the warranty of title in the said writings obligatory set forth was broken. And this said defendant is ready to verify. Wherefore the said defendant says that if he had paid and satisfied the said writings obligatory he would be entitled to recover damages from the plaintiff by reason of the matters herein pleaded, and such

damages would be to the whole amount of the said writings obligatory, and the said writings obligatory not having been paid or satisfied, this defendant says that he is entitled to relief against the obligation of the contract upon him in whole and for the whole amounts of the said writings obligatory.

40 8TH PLEA.

And the said defendant, for a further plea, says that the supposed writings obligatory, and each of them, in the plaintiff's declaration mentioned were executed by the said George L. Peyton as principal, and by the said William H. Peyton and the said William P. Farish as his sureties, in consideration of part of the price of thirty-three negroes which the plaintiff's testator, the said Geo. Rives, on the 5 day of December, in the year of our Lord 1863, contracted to sell, and on the 1 day of January, in the year of our Lord 1864, did sell and deliver, to the said George L. Peyton, with warranty of title as slaves. That on the 22 day of September, in the year of our Lord 1862, the President of the United States issued a proclamation, of which a substantial copy is herewith filed as a part of this plea, marked (No. 1). [The paper referred to has already been copied in plea No. 3.] That on the 1 day of January, in the year of our Lord 1863, the President of the United States issued another proclamation, of which a substantial copy is herewith filed as a part of this plea, marked (No. 2). [The paper referred to has already been copied in plea No. 3.] That on the 1 day of January, in the year of our Lord 1863, and from that time until and after the sale and delivery of the said negroes, both the said plaintiff's testator, the said
41 Geo. Rives, and the said George L. Peyton, were participants in the then existing rebellion against the United States, and they and the said thirty-three negroes were residents of Albemarle County and State of Virginia, which said county and State were embraced and included in the States and parts of States ordered and designated in the said proclamation of the President of the United States of the 1st day of January, in the year of our Lord 1863, as the States and parts of States wherein the people thereof respectively were, on said 1 day of January, in the year of our Lord 1863, in rebellion against the United States, and that said negroes contracted to be sold and sold and delivered by the plaintiff's testator, the said Geo. Rives, to the said George L. Peyton, as aforesaid, in consideration of part of the price of which said supposed writings obligatory in the plaintiff's declaration mentioned were, and each of them was, executed, were, on said 1 day of January, in the year of our Lord 1863, persons held as slaves in the said county of Albemarle, in the said State of Virginia, and were by said proclamation of the President of the United States of the 1 day of January, in the year of our Lord 1863, ordered and declared to be henceforward free. And the said defendant says that, by reason of said premises, the said thirty-three negroes were, at the time of said
42 contract, sale, and delivery by the plaintiff's testator, the said Geo. Rives, to the said George L. Peyton, free persons, and prior to the making of the demand in writing provided for by the writings obligatory, to wit, on the day of , in the year of our Lord 1865, the rights of said negroes, and of each of them, as free persons, as aforesaid, were recognized, maintained, and enforced by the Government and sovereign authority of the United States, and said negroes have, and each of them hath, ever since said day of , in the year of our Lord, 1865, and hitherto, actually and in fact possessed and

exercised, and they do, and each one of them doth, still possess and exercise, all the rights, privileges, and immunities of free persons, and so the consideration of the said writings obligatory wholly failed. And this the said defendant is read to verify. Wherefore the said defendant says that if he had paid and satisfied the said writings obligatory, he would be entitled to recover damages from the plaintiff by reason of the matters herein pleaded, and such damages would be to the whole amount of the said writings obligatory, and the said writings obligatory not having been paid or satisfied, this defendant says that he is entitled to relief against the obligation of the contracts upon him
43 in whole and for the whole amount of the said writings obligatory.

9TH PLEA.

And the said defendant, for a further plea, says that the supposed writings obligatory, and each of them, in the plaintiff's declaration mentioned were executed by the said George L. Peyton as principal, and by the said William H. Peyton and the said William P. Farish as his sureties, in consideration of part of the price of thirty-three negroes which the plaintiff's testator, the said Geo. Rives, on the 5 day of December, in the year of our 1863, contracted to sell, and on the 1st day of January, in the year of our Lord 1864, did sell and deliver, to the said George L. Peyton, with warranty of title as slaves. That the demand provided for by the writings obligatory, and which, by the terms thereof, was to be made in writing by the plaintiff's testator, the said Geo. Rives, his assigns or legal representatives, only, was not made until on or after the 28 day of August, in the year of our Lord 1866. That on and before the said 28 day of August, in the year of our Lord 1866, by action of the sovereign authority and Government of the United States and of the State of Virginia, slavery in Virginia had been abolished, and the said thirty-three negroes in the said writings
44 obligatory mentioned had been made, recognized, and declared to be free persons. And this he is ready to verify. Wherefore he prays judgment if the plaintiff ought to have or maintain his aforesaid action thereof against him.

10TH PLEA.

And the said defendant, for a further plea, says that the supposed writings obligatory, and each of them, in the plaintiff's declaration mentioned were executed by the said George L. Peyton as principal, and by the said William H. Peyton and the said William P. Farish as his sureties, in consideration of part of the price of thirty three negroes which the plaintiff's testator, the said Geo. Rives, on the 5 day of December, in the year of our Lord 1863, contracted to sell, and on the 1 day of January, in the year of our Lord 1864, did sell and deliver, to the said George L. Peyton, with warranty of title as slaves; that the demand provided for by the said writings obligatory, and which, by the terms thereof, was to be made in writing by the plaintiff's testator, the said Geo. Rives, his assigns or legal representatives, only, was not made until on or after the 28 day of August, in the year of our Lord 1866. That on and before the 28 day of August, in the year of our Lord 1866, by action of the sovereign authority and Government of the United
45 States and of the State of Virginia, slavery had been abolished, and the said thirty-three negroes in the said writings obligatory

mentioned had been made, recognized, and declared to be free persons, and so the warranty of title in the said writings obligatory set forth was broken. And this he is ready to verify. Wherefore the said defendant says that if he had been paid and satisfied the said writings obligatory, he would be entitled to recover damages from the plaintiff by reason of the matters herein pleaded, and such damages would be to the whole amount of the said writings obligatory; and the said writings obligatory not having been paid or satisfied, this defendant says that he is entitled to relief against the obligation of the contracts upon him in whole and for the whole amount of the said writings obligatory.

11TH PLEA.

And the said defendant, for a further plea, says that the supposed writings obligatory, and each of them, in the plaintiff's declaration mentioned were executed by the said George L. Peyton as principal,
46 and by the said William H. Peyton and the said William P. Farish as his sureties, in consideration of part of the price of thirty-three negroes which the plaintiff's testator, the said Geo. Rives, on the 5th day of December, in the year of our Lord 1863, contracted to sell, and on the 1 day of January, in the year of our Lord 1864, did sell and deliver, to the said George L. Peyton, with warranty of title as slaves. That the demand provided for by the said writings obligatory, and which by the terms thereof was to be made in writing by the plaintiff's testator, the said Geo. Rives, his assigns or legal representatives, only, was not made until on or after the 28 day of August, in the year of our Lord 1866; that on and before the said 28 day of August, in the year of our Lord 1866, by action of the sovereign authority and Government of the United States and of the State of Virginia, slavery in Virginia had been abolished, and the said thirty-three negroes in the said writings obligatory mentioned had been made, recognized, and declared to be free persons, and so the consideration of the said writings obligatory wholly failed. And this he is ready to verify. Wherefore the said defendant says that if he had paid and satisfied the said writings
47 obligatory, he would be entitled to recover damages from the plaintiff by reason of the matters herein pleaded, and such damages would be to the whole amount of the said writings obligatory; and the said writings obligatory not having been paid or satisfied, this defendant says that he is entitled to relief against the obligation of the contracts upon him in whole and for the whole amount of the said writings obligatory.

12TH PLEA.

And the said defendant, for a further plea, says that the supposed writings obligatory, and each of them, in the plaintiff's declaration mentioned were executed by the said George L. Peyton as principal, and by the said William H. Peyton and the said William P. Farish as his sureties, in consideration of part of the price of thirty-three negroes which the plaintiff's testator, the said Geo. Rives, on the 5th day of December, in the year of our Lord 1863, contracted to sell, and on the 1 day of January, in the year of our Lord 1864, did sell and deliver, to the said George L. Peyton, with warranty of title as slaves; that after the making of the said contract, sale, and delivery, and before the institution of this suit, by action of the sovereign authority and Government of the United States and of the State of Virginia,

48 slavery in the United States and in the State of Virginia was abolished, and the said thirty-three negroes in the said writings obligatory mentioned were made, recognized, and declared to be free persons. And this said defendant is ready to verify. Wherefore he prays judgment if the plaintiff ought to have or maintain his aforesaid action thereof against him.

13TH PLEA.

And the said defendant, for a further plea, says that the supposed writings obligatory, and each of them, in the plaintiff's declaration mentioned were executed by the said George L. Peyton as principal, and by the said William H. Peyton and the said William P. Farish as his sureties, in consideration of part of the price of thirty-three negroes which the plaintiff's testator, the said Geo. Rives, on the 5 day of December, in the year of our Lord 1863, contracted to sell, and on the 1 day of January, in the year of our Lord 1864, did sell, to the said George L. Peyton, with warranty of title as slaves; that after the making of said contract, sale, and delivery, and before the institution of this suit, by action of the sovereign authority and Government of the United States and of the State of Virginia, slavery in the United States and in the State of Virginia was abolished, and the said
49 thirty-three negroes in the writings obligatory mentioned were made, recognized, and declared to be free persons, and so the warranty of title in the said writings obligatory set forth was broken. And this the said defendant is ready to verify. Wherefore the said defendant says that if he had paid and satisfied the said writings obligatory, he would be entitled to recover damages from the said plaintiff by reason of the matters herein pleaded, and such damages would be to the whole amount of the said writings obligatory; and the said writings obligatory not having been paid or satisfied, this defendant says that he is entitled to relief against the obligation of the contracts upon him in whole and for the whole amount of the said writings obligatory.

14TH PLEA.

And the said defendant, for a further plea, says that the supposed writings obligatory, and each of them, in the plaintiff's declaration mentioned were executed by the said George L. Peyton as principal, and by the said William H. Peyton and the said William P. Farish as his sureties, in consideration of part of the price of thirty-three negroes which the plaintiff's testator, the said Geo. Rives, on the 5 day of December, in the year of our Lord 1863, contracted to sell, and on the 1 day of January, in the year of our Lord 1864, did sell and de-
50 liver, to the said George L. Peyton, with warranty of title as slaves; that after the making of the said contract, sale, and delivery, and before the institution of this suit, by action of the sovereign authority and Government of the United States and of the State of Virginia, slavery in the United States and in the State of Virginia was abolished, and the said thirty-three negroes in the said writings obligatory mentioned were made, recognized, and declared to be free persons, and so the consideration of the said writings obligatory wholly failed. And this said defendant is ready to verify. Wherefore the said defendant says that if he had paid and satisfied the said writings obligatory, he would be entitled to recover damages from the plaintiff

by reason of the matters herein pleaded, and such damages would be to the whole amount of the said writings obligatory; and the said writings obligatory not having been paid or satisfied, this defendant says that he is entitled to relief against the obligation of the contracts upon him in whole and for the whole amount of the said writings obligatory.

15TH PLEA.

And the said defendant, for a further plea, says that the supposed writings obligatory, and each of them, in the plaintiff's declaration mentioned were executed by the said George L. Peyton as prin-
51 cipal, and by the said William H. Peyton and the said William P. Farish as his sureties, in consideration of part of the price of thirty-three negroes which the plaintiff's testator, the said Geo. Rives, on the 5th day of December, in the year of our Lord 1863, contracted to sell, and on the 1st day of January, in the year of our Lord 1864, did sell and deliver, to the said George L. Peyton, with warrantry of title as slaves; that after the making of the said contract, sale, and delivery, and before the bringing of this suit, Articles XIII, XIV, and XV of the amendments to the Constitution of the United States were adopted, and the constitution of the State of Virginia was changed, first, by the adoption of the constitution framed by the convention which assembled at Alexandria on the 13 day of February, in the year of our Lord 1864, and again by the adoption of the present State constitution, framed by the convention which assembled in Richmond on the 3d day of December, in the year of our Lord 1867; by reason of which premises the said defendant says that it has become and is unlawful to make or to enforce any contract in which the said thirty-three negroes have been or are treated or dealt with otherwise than as free persons. And this he is ready to verify. Wherefore he prays judgment if the plaintiff ought to have or maintain his aforesaid action thereof against him.

52 16TH PLEA.

And the said defendant, for a further plea, says that the supposed writings obligatory, and each of them, in the plaintiff's declaration mentioned were executed by the said George L. Peyton as principal, and by the said William H. Peyton and William P. Farish as his sureties, in consideration of part of the price of thirty-three negroes which the plaintiff's testator, the said Geo. Rives, on the 5th day of December, in the year of our Lord 1863, contracted to sell, and on the 1st day of January, in the year of our Lord 1864, did sell and deliver, to the said George L. Peyton, with warranty of title as slaves; that after the making of the said contract, sale, and delivery, and before the bringing of this suit, Articles XIII, XIV, and XV of the amendments to the Constitution of the United States were adopted, the constitution of the State of Virginia was changed, first, by the adoption of the constitution framed by the convention which assembled at Alexandria on the 13th day of February, in the year of our Lord 1864, and again by the adoption of the present State constitution, framed by the convention which met in the city of Richmond on 3d day of December, in the year of our Lord 1867. By reason of which premises the said defendant says it has become and is unlawful to make or to enforce any contract in which the said thirty-three negroes have been or are treated or dealt with
53 otherwise than as free persons, and so the warranty of title in

the said writings set forth was broken. And this he is ready to verify. Wherefore the said defendant says that if he had paid and satisfied the said writings obligatory, he would be entitled to recover damages from the plaintiff by reason of the matters herein plead, and such damages would be to the whole amount of the said writings obligatory; and the said writings obligatory not having been paid or satisfied, this defendant says that he is entitled to relief against the obligation of the contracts in whole and ofor the whole amount of the said writings obligatory.

17TH PLEA.

And the said defendant, for a further plea, says that the supposed writings obligatory, and each of them, in the plaintiff's declaration mentioned were executed by the said George L. Peyton as principal, and by the said William H. Peyton and the said William P. Farish as his sureties, in consideration of part of the price of thirty-three negroes which the plaintiff's testator, the said George Rives, on the 5th day of December, in the year of our Lord 1863, contracted to sell, and on the 1 day of January, in the year of our Lord 1864, did sell and deliver, to the said George L. Peyton, with warranty of title as slaves.

54 That after the making of the said contract, sale, and delivery, and before the bringing of this suit, Articles XIII, XIV, and XV of the amendments to the Constitution of the United States were adopted, and the constitution of the State of Virginia was changed, first, by the adoption of the constitution framed by the convention which assembled at Alexandria on the 13 day of February, in the year of our Lord 1864, and again by the adoption of the present State constitution, framed by the convention which met in Richmond on the 3d day of December, in the year of our Lord 1867. By reason of which premises the said defendant says that it has become, and is, unlawful to make or to enforce any contract in which the said thirty-three negroes have been, or are, treated or dealt with otherwise than as free persons, and so the consideration of the said writings obligatory wholly failed. And this he is ready to verify. Wherefore the said defendant says that if he had paid and satisfied the said writings obligatory he would be entitled to recover damages from the plaintiff by reason of the matters herein pleaded, and such damages would be to the whole amount of the said writings obligatory; and the said writings obligatory not having been paid or satisfied, this defendant says that he is entitled to relief against the obligation of the contracts upon him in whole and for the whole amount of

55 the said writings obligatory.

18TH PLEA.

And the said defendant, for a further plea, says that the supposed writings obligatory, and each of them, in the plaintiff's declaration mentioned were executed by the said George L. Peyton as principal, and by the said William H. Peyton and the said William P. Farish as his sureties, in consideration of part of the price of thirty-three negroes which the plaintiff's testator, the said Geo. Rives, on the 5 day of December, in the year of our Lord 1863, contracted to sell, and on the 1 day of January, in the year of our Lord 1864, did sell and deliver, to the said George L. Peyton, with warranty of title as slaves. That on the 22 day of September, in the year of our Lord 1862, the President of the United States issued a proclamation, of which a substantial

copy is herewith filed as a part of this plea, marked (No. 1). [The paper referred to has already been copied in plea No. 3.] That on the 1 day of January, in the year of our Lord 1863, the President of the United States issued another proclamation, of which a substantial copy is herewith filed as a part of this plea, marked (No. 2). [The paper referred to has already been copied in plea No. 3.] That on the 8th day of December, in the year of our Lord 1863, the President of the
56 United States issued another proclamation, of which a substantial copy is herewith filed as a part of this plea, marked (No. 3), which is in the words and figures following, to wit:

By the President of the United States of America:

A PROCLAMATION.

Whereas in and by the Constitution of the United States it is provided that the President "shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment;" and

Whereas a rebellion now exists, whereby the loyal State governments of several States have for a long time been subverted, and many persons have committed, and are now guilty of, treason against the United States; and

Whereas, with reference to said rebellion and treason, laws have been enacted by Congress declaring forfeitures and confiscation of property and liberation of slaves, all upon terms and conditions therein stated, and also declaring that the President was thereby authorized, at any time thereafter, by proclamation, to extend to persons who may have participated in the existing rebellion, in any State or part thereof, pardon and amnesty, with such exceptions and at such times and on such conditions as he may deem expedient for the public welfare; and

Whereas the Congressional declaration for limited and conditional pardon accords with well-established judicial exposition of the
57 pardoning power; and

Whereas, with reference to said rebellion, the President of the United States has issued several proclamations, with provisions in regard to the liberation of slaves; and

Whereas it is now desired by some persons heretofore engaged in said rebellion to resume their allegiance to the United States, and to reinaugurate loyal State governments within and for these respective States: Therefore,

I, Abraham Lincoln, President of the United States, do proclaim, declare, and make known to all persons who have, directly or by implication, participated in the existing rebellion, except as hereinafter excepted, that a full pardon is hereby granted to them and each of them, with restoration of all rights of property, except as to slaves and in property cases where rights of third parties shall have intervened, and upon the condition that every such person shall take and subscribe an oath, and thenceforward keep and maintain said oath inviolate; and which oath shall be registered for permanent preservation, and shall be of the tenor and effect following, to wit:

"I, , do solemnly swear, in presence of Almighty God, that I will henceforth faithfully support, protect, and defend the Constitution of the United States and the union of the States thereunder; and that I will, in like manner, abide by and faithfully
58 support all acts of Congress passed during the existing rebellion

with reference to slaves, so long and so far not repealed, modified, or held void by Congress, or by decision of the Supreme Court, and that I will, in like manner, abide by and faithfully support all proclamations of the President made during the existing rebellion having reference to slaves, so long and so far as not modified or declared void by decision of the Supreme Court. So help me God."

The persons excepted from the benefits of the foregoing provisions are all who are, or shall have been, civil or diplomatic officers or agents of the so-called Confederate government; all who have left judicial stations under the United States to aid the rebellion; all who are, or shall have been, military or naval officers of said so-called Confederate government above the rank of colonel in the army or of lieutenant in the navy; all who left seats in the United States Congress to aid the rebellion; all who resigned commissions in the Army or Navy of the United States and afterwards aided the rebellion; & all who have engaged in any way in treating colored persons, or white persons in charge of such, otherwise than lawfully as prisoners of war, and which persons may have been found in the United States service as soldiers, seamen, or in any other capacity.

59 And I do further proclaim, declare, and make known that whenever, in any of the States of Arkansas, Texas, Louisiana, Mississippi, Tennessee, Alabama, Georgia, Florida, South Carolina, and North Carolina, a number of persons, not less than one-tenth in number of the votes cast in such State at the Presidential election of the year of our Lord one thousand eight hundred and sixty; each having taken the oath aforesaid, and not having since violated it, and being a qualified voter by the election law of the State existing immediately before so-called act of secession, and excluding all others, shall re-establish a State government which shall be republican, and in no wise contravening said oath, such shall be recognized as the true government of the State, and the State shall receive thereunder the benefits of the constitutional provision which declares that "the United States shall guaranty to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or the executive (when the legislature cannot be convened), against domestic violence."

60 And I do further proclaim, declare, and make known that any provision which may be adopted by such State government in relation to the freed people of such State, which shall recognize and declare their permanent freedom, provide for their education, and which may yet be consistent, as a temporary arrangement, with their present condition, as a laboring, landless, and homeless class, will not be objected to by the national executive.

And it is suggested as not improper that, in construing a loyal State government in any State, the name of the State, the boundary, the subdivisions, the constitution, and the general code of laws, as before the rebellion, be maintained, subject only to the modifications made necessary by the conditions hereinbefore stated, and such others, if any, not contravening said conditions, and which may be deemed expedient by those framing the new State government.

To avoid misunderstanding, it may be proper to say that this proclamation, so far as it relates to State governments, has no reference to States wherein loyal State governments have all the while been maintained. And, for the same reason, it may be proper to further say, that whether members sent to Congress from any State shall be admitted to seats constitutionally, rests exclusively with the respective houses, and

not to any extent to the executive. And still further that this proclamation is intended to present to the people of the States wherein the national authority has been suspended, and loyal State governments have been subverted, a mode in and by which the national authority
61 and loyal State governments may be re-established within said States, or in any of them; and, while the mode presented is the best the executive can suggest, with his present impressions, it must not be understood that no other possible mode would be accepted.

Given under my hand at the city of Washington, the 8th day of December, A. D. one thousand and sixty-three, and of the Independence of the United States of America the eighty-eighth.

[L. S.] ABRAHAM LINCOLN.

By the President:

WILLIAM H. SEWARD, *Secretary of State.*

That the said plaintiff's testator, the said Geo. Rives, having been a participant in the rebellion against the United States, and being one of the persons included in the offer of amnesty and pardon contained in the proclamation last mentioned, accepted the same upon the terms and conditions therein set forth; and in consideration thereof, after the making of the said contract, sale, and delivery, to wit, on the day of , in the year of our Lord 1865, took the oath prescribed in the said proclamation and agreed and promised faithfully to observe and keep the same. And this said defendant is ready to *to* verify. Wherefore he prays judgment if the plaintiff ought to have or maintain his aforesaid action thereof against him.

19TH PLEA.

62 And the said defendant, for a further plea, says that the supposed writings obligatory and each of them, in the plaintiff's declaration mentioned were executed by the said George L. Peyton as principal and by the said William H. Peyton and the said William P. Farish as his sureties, in consideration of part of the price of thirty-three negroes, which the plaintiff's testator, the said Geo. Rives, on the 5 day of December, in the year of our Lord 1863, contracted to sell, and on the 1 day of January, in the year of our Lord 1864, did sell and deliver to the said George L. Peyton, with warranty of title, as slaves.

That on the 22d day of September, in the year of our Lord, 1862, the President of the United States issued a proclamation, of which a substantial copy is herewith filed as a part of this plea marked (No. 1). [The paper referred to has already been copied in plea No. 3.] That on the 1st day of January, in the year of our Lord, 1862, the President of the United States issued another proclamation of which a substantial copy is herewith filed as a part of this plea, marked (No. 2). [The paper referred to has already been copied in plea No. 3.] That on the 8th day of December, in the year of our Lord, 1863, the President of the United States issued another proclamation of which a substantial copy is herewith filed as a part of this plea, marked (No. 3). [The paper referred to has already been copied in plea No. 18.] That on the 29th day
63 of May, in the year of our Lord, 1865, the President of the United States issued another proclamation, of which a substantial copy is herewith filed as a part of this plea, marked (No. 4), which is in the words and figures following, to wit:

By the President of the United States of America:

A PROCLAMATION.

Whereas the President of the United States, on the 8th day of December, A. D. eighteen hundred and sixty-three, on the 26th day of March, A. D. eighteen hundred and sixty-four, did, with the object to suppress the existing rebellion, to induce all persons to return to their loyalty, and to restore the authority of the United States, issue proclamations offering amnesty and pardon to certain persons who had directly or by implication participated in the said rebellion; and whereas many persons who had so engaged in said rebellion have, since the issuance of said proclamations, failed or neglected to take the benefits offered thereby; and whereas many persons who have been justly deprived of all claim to amnesty and pardon thereunder by reason of their participation directly or by implication in said rebellion, and continued hostility to the government of the United States since the date of said proclamations, now desire to apply for and obtain amnesty and pardon:

To the end, therefore, that the authority of the Government of the United States may be restored, and that peace, order, and
64 freedom may be established, I, Andrew Johnson, President of the United States, do proclaim and declare that I hereby grant to all persons who have, directly or indirectly, participated in the existing rebellion, except as hereinafter excepted, amnesty and pardon, with restoration of all rights of property except as to slaves, and except in cases where legal proceedings under the laws of the United States providing for the confiscation of property of persons engaged in rebellion, have been instituted; but upon the condition, nevertheless, that every such person shall take and subscribe the following oath, (or affirmation,) and thenceforward keep and maintain said oath inviolate; and which oath shall be registered for permanent preservation, and shall be of the tenor and effect following, to wit:

"I, , do solemnly swear, (or affirm), in presence of Almighty God, that I will henceforth faithfully support and defend the Constitution of the United States and the union of the States thereunder; and that I will, in like manner, abide by and faithfully support all laws and proclamations which have been made during the existing rebellion with reference to emancipation of slaves, so help me God."

The following classes of persons are excepted from the benefits of this proclamation: 1st, all who are or shall have been pretended civil
65 or diplomatic officers or otherwise domestic or foreign agents of the pretended Confederate government; 2d, all who left judicial stations under the United States to aid the rebellion; 3d, all who shall have been military or naval officers of said pretended Confederate government above the rank of colonel in the army or lieutenant in the navy; 4th, all who left seats in the Congress of the United States to aid the rebellion; 5th, all who resigned or tendered resignations of their commissions in the army or navy of the United States to evade duty in resisting the rebellion; 6th, all who have engaged in any way in treating otherwise than lawfully as prisoners of war persons found in the United States service as officers, soldiers, seamen, or in other capacities; 7th, all persons who have been, or are absentees from the United States for the purpose of aiding the rebellion; 8th, all military and naval officers in the rebel service who were educated by the government in the Military Academy at West Point or the United States Naval Academy; 9th, all persons who held the pretended offices of governors of States in

insurrection against the United States; 10th, all persons who left their homes within the jurisdiction and protection of the United States and passed beyond the federal military lines into the pretended Confederate States for the purpose of aiding the rebellion; 11th, all persons who have been engaged in the destruction of the commerce of the
66 United States upon the high seas; all persons who have made raids into the United States from Canada, or been engaged in destroying the commerce of the United States upon the lakes and rivers that separate the British provinces from the United States; 12th, all persons who, at the time when they seek to obtain the benefits hereof by taking the oath herein prescribed, are in military, naval, or civil confinement or custody, or under bonds of the civil, military, or naval authorities, or agents of the United States as prisoners of war, or persons detained for offences of any kind either before or after conviction; 13th, all persons who have voluntarily participated in said rebellion, and the estimated value of whose taxable property is over twenty thousand dollars; 14th, all persons who have taken the oath of amnesty as prescribed in the President's proclamation of December 8th, A. D. 1863, or an oath of allegiance to the government of the United States since the date of said proclamation, & who have not henceforward kept and maintained the same inviolate.

Provided, That special application may be made to the President for ardon by any person belonging to the excepted classes, and such clemncy will be liberally extended as may be consistent with the facts of the case and the peace and dignity of the United States. The Secretary of State will establish rules and regulations for administer-
67 ing and recording the said amnesty oath, so as to insure its benefits to the people, and guard the government against fraud.

In testimony whereof I hereunto set my hand and cause the seal of the United States to be affixed.

Done at the city of Washington the twenty-ninth day of May, in the year of our Lord one thousand eight hundred and sixty five, and of the Independence of the United States the eighty-ninth.

[L. S.] ANDREW JOHNSON.

By the President.
WILLIAM H. SEWARD,
Secretary of State.

That the said plaintiffs' testator, the said Geo. Rives, having been a participant in the rebellion against the United States, and being one of the persons included in the offer of amnesty and pardon, contained in the proclamation last mentioned, accepted the same, upon the terms and conditions thereof and after the making of the said contract, sale, and delivery, to wit, on the day of , in the year of our Lord 1865, took the oath prescribed in the proclamation and agreed and promised faithfully to observe and keep the same, and said defendant is ready to verify; whereupon he prays judgment if the plaintiff ought to have or maintain his aforesaid action against him.

68 20TH PLEA.

And the said defendant, for a further plea, says that the supposed writings obligatory, and each of them, in the plaintiff's declaration mentioned, were executed by the said George L. Peyton as principal, and by the said William H. Peyton and the said William P. Farish as his sur'ties, in consideration of part of the price of thirty-three negroes

which the plaintiff's testator, the said Geo. Rives, on the 5th day of December, in the year of our Lord 1863, contracted to sell, and on the 1st day of January, in the year of our Lord 1864, did sell and deliver to the said George L. Peyton, with warranty of title as slaves.

That on the 22 day of September, in the year of our Lord 1862, the President of the United States issued a proclamation of which a substantial copy is herewith filed as a part of this plea marked (No. 1.) [The paper referred to has already been copied in plea No. 3.] That on the 1 day of January, in the year of our Lord 1863, the President of the United States issued another proclamation, of which a substantial copy is herewith filed as a part of this plea marked (No. 2.) [The paper referred to has already been copied in plea No. 3.] That on the 8th day of December, in the year of our Lord 1863, the President of the United States issued another proclamation of which a substantial copy
69 is herewith filed marked (No. 3.) [The paper referred to has already been copied in plea No. 18th.] That on the 29 day of May, in the year of our Lord 1865, the President of the United States issued another proclamation of which a substantial copy is herewith filed as a part of this plea marked (No. 4.) [The paper referred to has already been copied in plea No. 19th.] That the said plaintiff's testator, the said Geo. Rives, having been a participant in the rebellion against the United States, applied for and received from the President of the United States a special pardon, of which a substantial copy is herewith filed as a part of this plea marked (No. 5), which is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Department of State:

To all whom these presents shall come, greeting:

I certify that the papers hereto annexed are true copies of the originals on file in this department.

In testimony whereof I, Hamilton Fish, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed. Done at the city of Washington this thirteenth day of October, A. D. 1870, and of the Independence of the United States of America the ninety-fifth.

[L. S.] HAMILTON FISH.

70 JAN'Y 15TH, 1866.

Honorable WILLIAM H. SEWARD,
Secretary of State:

SIR: I have the honor to acknowledge the receipt of the President's warrant of pardon, bearing date 2nd Aug'st, 1865, and hereby signify my acceptance of the same, with all the conditions therein specified.

I am, sir, your obedient servant,

GEO. RIVES.

Andrew Johnson, President of the United States of America to all whom these presents shall come, greeting:

Whereas George Rives, of Albemarle County, Virginia, by taking part in the late rebellion against the Government of the United States, has made himself liable to heavy pains and penalties;

And whereas the circumstances of his case render him a proper object of executive clemency:

Now, therefore, be it known that I, Andrew Johnson, President of

the United States of America, in consideration of the premises, divers other good and sufficient reasons to me thereunto moving, do hereby grant to the said George Rives, a full pardon and amnesty for all offences by him committed, arising from participation, direct
71 or implied, in the said rebellion, conditioned as follows, viz: This pardon to begin and take effect from the day on which the said George Rives shall take the oath prescribed in the proclamation of the President, dated May 29th, 1865, and to be void and of no effect if the said George Rives shall hereafter, at any time, acquire any property whatever in slaves, or make use of slave labor; and that he first pay all costs which may have accrued in any proceedings hitherto instituted against his person or property.

And upon the further condition that the said George Rives shall notify the Secretary of State, in writing, that he has received and accepted the foregoing pardon.

In testimony whereof I have hereunto signed my name and caused the seal of the United States to be affixed.

Done at the city of Washington, this second day of August, A. D. 1865, and of the Independence of the United States the ninetieth.

[L. S.] ANDREW JOHNSON.

By the President:
W. HUNTER,
Acting Secretary of State.

And accepted the said pardon with all the conditions therein specified and took and subscribed the oath therein prescribed, and notified the Secretary of State in writing that he had received and accepted
72 the same; and this said defendant is ready to verify, wherefore he prays judgment if the plaintiff ought to have or maintain his aforesaid action thereof against him.

21ST PLEA.

And the defendant for a further plea says that the supposed writings obligatory and each of them, in the plaintiff's declaration mentioned, were executed by the said George L. Peyton, as principal, and by the said William H. Peyton and the said William P. Farish as his sureties, in consideration of part of the price of thirty-three negroes, which the plaintiff's testator, the said Geo. Rives, on the 5th day of December, in the year of our Lord 1863, contracted to sell, and on the 1st day of January, in the year of our Lord 1864, did sell and deliver to the said George L. Peyton, with warranty of title, as slaves.

That on the 22d day of September, in the year of our Lord 1862, the President of the United States issued a proclamation, of which a substantial copy is herewith filed as a part of this plea, marked (No. 1.) [The paper referred to has already been copied in plea No. 3rd.]

That on the 1 day of January, in the year of our Lord 1863, the President of the United States issued another proclamation, of which a substantial copy is herewith filed as a part of this plea, marked (No. 2.) [The paper referred to has already been copied in plea No. 3.]

That on the 1 day of January, in the year of our Lord 1863, the President of the United States issued another proclamation, of which a substantial copy is herewith filed as a part of this plea, marked (No. 2).

[The paper referred to has already been copied in plea No. 3.]

73 That on the 1 day of January, in the year of our Lord 1863, and

from that time, until and after the sale and delivery of the said negroes, both the said plaintiff's testator, the said Geo. Rives and the said Geo. L. Peyton, were participants in the then existing rebellion against the United States, and they and the said thirty-three negroes were residents of Albermarle County, in the State of Virginia, which said county and State were embraced and included in the States and parts of States, ordered and designated in the said proclamation of the President of the United States of the 1 day of January, in the year of our Lord 1863, as the States and parts of States wherein the people thereof respectively were on said 1st day of January, in the year of our Lord 1868, in rebellion against the United States, and that said negroes, contracted to *to* be sold and sold and delivered by the plaintiff's testator, the said Geo Rives, to the said George L. Peyton, as aforesaid, in consideration of part of the price of which said supposed writings obligatory in the plaintiff's declaration mentioned, were, and each of them was executed, were on said 1 day of January, in the year of our Lord 1863, persons held as slaves within the said county of Albemarle, in the said State of Virginia, and were, by said proclamation of the President of the United States, of the 1st day of January, in the year of our Lord 1863, ordered and declared to be thenceforward free.

74 That the said contract of sale of the said thirty-three negroes made on the 5 day of December, in the year of our Lord 1863, and also the said sale and delivery of the same negroes made on the 1 day of January, in the year of our Lord 1864, were in direct contravention of the policy of the United States Government, as manifested by the two proclamations aforesaid; and the defendant says that by reason of said premises the conside' of the said writings obligatory, was and still is, wholly illegal and this he is ready to verify, wherefore he prays judgment if the plaintiff ought to have or maintain his aforesaid action thereof against him.

22D PLEA.

And the defendant, for a further plea, says that the supposed writings obligatory and each of them, in the plaintiff's declaration mentioned were executed by the said George L. Peyton as principal, and by the said William H. Peyton and the said William P. Farish as his sureties, in consideration of part of the price of thirty three negroes which the plaintiff's testator, the said Geo. Rives, on the 5 day of December, in the year of our Lord 1863, contracted to sell, and on the 1st day of January, in the year of our Lord 1864, did sell and deliver to the said George L. Peyton, with warranty of title, as slaves, such contract of sale, as well as such sale and delivery, having been made in Albemarle County, Virginia, then a part of the Confederate States. That on the 22 day of September, in the year of our Lord 1862, the Presi-

75 dent of the United States issued a proclamation, of which a substantial copy is herewith filed as a part of this plea marked (No. 1.) [The paper referred to has been copied in plea No. 3.] That on the 1 day of January, in the year of our Lord 1863, the President of the United States issued another proclamation, of which a substantial copy is herewith filed as a part of this plea marked (No. 2.) [The paper referred to has already been copied in plea No. 3.] That on the 1st day of January, in the year of our Lord 1863, and from that time until and after the sale and delivery of the said negroes, both the said plaintiff's testator, the said Geo. Rives, and the said George L Peyton were participants in the then existing rebellion against the United States, and they and the said thirty-three negroes were residents of Albemarle

County, in the State of Virginia, which said county and State were embraced and included in the States and parts of States ordered and designated in the said proclamation of the President of the United States of the 1 day of January, in the year of our Lord 1863, in rebellion against the United States, and that said negroes, contracted to be sold and sold and delivered by the plaintiff's testator, the said Geo. Rives, to the said George L. Peyton, as aforesaid, in consideration of part of the price of which said supposed writings obligatory in the plaintiff's dec-
76 laration mentioned were, and each of them was executed, were on said 1st day of January, in the year of our Lord, 1863, persons held as slaves within the said county of Albemarle, in the said State of Virginia, and were, by said proclamation of the President of the United States of the 1st day of January, in the year of our Lord 1863, ordered and declared to be thenceforward free. That the said contract of sale of the said thirty-three negroes made on the 5 day of December, in the year of our Lord 1863, and also the said sale and delivery of the same negroes made on the 1st day of January, in the year of our Lord 1864, were in direct contravention of the policy of the United States Government, as manifested by the two proclamations aforesaid; and the defendant says that by reason of the premises neither the said contract nor the said writings obligatory given in pursuance thereof will be enforced in any court of the United States; and this he is ready to verify. Wherefore he prays judgment if the plaintiff ought to have or maintain his aforesaid action thereof against him.

23D PLEA.

And the defendant, for a further plea, says that the supposed writings obligatory, and each of them, in the plaintiff's declaration mentioned, were executed by the said George L. Peyton as principal, and by
77 the said William H. Peyton and the said William P. Farish as his sureties, in consideration of part of the price of thirty-three negroes, which the plaintiff's testator, the said Geo. Rives, on the 5 day of December, in the year of our Lord 1863, contracted to sell, and on the 1st day of January, in the year of our Lord 1864, did sell and deliver to the said George L. Peyton, with warranty of title, as slaves. That on the 22 day of September, in the year of our Lord 1862, the President of the United States issued a proclamation, of which a substantial copy is herewith filed, as part of this plea, marked (No. 1.) [The paper referred to has already been copied in plea No. 3.] That on the 1 day of January, in the year of our Lord 1863, the President of the United States issued another proclamation, of which a substantial copy is herewith filed, as part of this plea, marked (No. 2.) [The paper referred to has already been copied in plea No. 3.] That on the 1st day of January, in the year of our Lord 1863, and from that time until and after the sale and delivery of the said negroes, both the plaintiff's testator, the said Geo. Rives, and the said George L. Peyton were partici-
78 pants in the then existing rebellion against the United States, and they and the said thirty-three negroes were residents of Albemarle County, in the State of Virginia, which said county and State were embraced and included in the States and parts of States ordered and designated in the said proclamation of the President of the United States, of the 1st day of January, in the year of our Lord 1863, as the States and parts of States wherein the people thereof respectively were, on said 1st day of January, in the year of our Lord 1863, in rebellion against the United States, and that said negroes, contracted to be sold

and sold and delivered by the plaintiff 's testator to the said George L. Peyton, as aforesaid, in consideration of part of the price of which said supposed writings obligatory in the plaintiff's declaration mentioned were and each of them was executed, were, on said 1st day of January, in the year of our Lord 1863, persons held as slaves within the said county of Albemarle, in the said State of Virginia, and were by said proclamation of the President of the United States, of the 1 day of January, in the year of our Lord 1863, ordered and declared to be thenceforward free.

And the defendant says that, by the said proclamation of the 1st day of January, in the year of our Lord 1863, the said thirty-three negroes were not only declared to be free persons, but that afterwards,
79 to wit, on the day of , in the year of our Lord , the said George L. Peyton, in pursuance of said proclamation was, by the authority and power of the executive government of the United States, including the military and naval authorities thereof, wholly deprived of the said thirty-three negroes. And this he is ready to verify. Wherefore he prays judgment of the plaintiffs ought to have or maintain *their* aforesaid action thereof against him.

24TH PLEA.

And the defendant, for a further plea, says that the supposed writings obligatory, and each of them, in the plaintiffs' declaration mentioned, were executed by the said George L. Peyton, as principal, and by the said William H. Peyton and the said William P. Farish, as his sureties, in consideration of part of the price of thirty-three negroes, which the plaintiff's testator, the said Geo. Rives, on the 5 day of December, in the year of our Lord 1863, contracted to sell, and on the 1st day of January, in the year of our Lord 1864, did sell and deliver to the said George P. Peyton, with warranty of title, as slaves.

That on the 22 day of September, in the year of our Lord, 1862, the President of the United States issued a proclamation, of which a substantial copy is herewith filed as a part of this plea, marked (No.
80 1.) [The paper referred to has already been copied in plea No. 3.] That on the 1 day of January, in the year of our Lord, 1863, the President of the United States, issued another proclamation, of which a substantial copy is herewith filed as a part of this plea, marked (No. 2.) [The paper referred to has *has* already been copied in plea No. 3.] that on the 1 day of January, in the year of our Lord 1863, and from that time until and after the sale and delivery of the said negroes, both the said plaintiffs' testator, Geo. Rives, and the said George L. Peyton, were participants in the then existing rebellion against the United States; and they and the said thirty-three negroes were residents of Albemarle County, in the State of Virginia, which said county and State were embraced and included in the States and parts of States ordered and designated in the said proclamation of the President of the United States, of the 1st day of January, in the year of our Lord 1863, as the States and parts of States wherein the people thereof respectively were, on said 1st day of January, in the year of our Lord 1863, in rebellion against the United States, and that said negroes, contracted to be sold and sold and delivered by the plaintiffs' testator to the said George L. Peyton, as aforesaid, in consideration of part of the price of which said
81 supposed writings obligatory in the plaintiff's declarating mentioned were and each of them was executed, were, on said 1st day of January, in the year of our Lord 1863, persons held as slaves

within the said county of Albemarle, in the said State of Virginia, and were, by said proclamation of the President of the United States of the 1st day of January, in the year of our Lord 1863, ordered and declared to be thenceforward free.

That on the 8 day of December, in the year of Lord 1863, the President of the United issued another proclamation, of which a substantial copy is herewith filed as a part of this plea, marked (No. 3.) [The paper referred to has already been copied in plea No. 18th.]

That the plaintiffs' testa or afterwards, to wit, on the day of , in the year of our Lord 1865, accepted the amnesty and pardon offered by the said proclamation of the 8 day December, in the year of our Lord 1863, and in consideration thereof took the *took the* oath therein prescribed, and agreed and promised faithfully to observe and keep the same.

That on the 29 day of May, in the year of our Lord 1865, the President of the United States issued another proclamation, of which a substantial copy is herewith filed, marked (No. 4.) [The paper referred to has already been copied in plea No. 18th.] That the plaintiffs' testator, said Geo. Rives, afterwards, to wit, on the day of , in the year
82 of our 1865, accepted the amnesty and pardon offered by the said proclamation of the said 29 day of May, in the year of our Lord 1865, and in consideration thereof took the oath therein prescribed, and agreed and promised faithfully to observe and keep the same.

That afterwards, to wit, on the day of in the year of our Lord 1865, the said plaintiff's testator, the said Geo. Rives, applied for and received from the President of the United States a special pardon, of which a substantial copy is herewith filed as a part of this plea, marked (No. 5) [the paper referred to has already been copied in plea No. 18th], and accepted the said pardon, with all the conditions therein specified, took and subscribed the oath therein prescribed, and notified the Secretary of State in writing that he had received and accepted the same. That afterwards, and before the bringing of this suit, Articles XIII, XIV, and XV of the amendments to the Constitution of the United States were adopted, and the constitution of the State of Virginia was changed, first, by the adoption of the constitution framed by the convention which assembled at Alexandria, on the 13 day of February, in the year of our Lord 1864, and again by the adoption of the present State constitution, framed by the convention which met
83 in Richmond, on the 3 day of December, in the year of our Lord 1867.

By means of which premises, the defendant says that it has become and is unlawful to make or to enforce in the State of Virginia, or in any of the courts thereof, any contract of the said plaintiff's testator, Geo. Rives, whereby the said thirty-three negroes have been or are treated or dealt with otherwise than as free persons. And this he is ready to verify. Wherefore he prays judgment if the plaintiff ought to have or maintain his aforesaid action thereof against him.

25TH PLEA.

And the said defendant for a further plea in this behalf, says that the said supposed writings obligatory, and each of them, in the plaintiff's declaration mentioned, were executed by the said George L. Peyton, as principal, and by the said William H. Peyton and the said Wm. P. Farish, as his sureties, in consideration of part of the price of thirty-

three negroes which the plaintiff's testator, the said George Rives, on the 5th day of December, 1863, contracted to sell, and on the 1st day of January, 1864, did sell and deliver to the said George L. Peyton.

And the said George Rives did then and there warrant the title to said thirty-three negroes as slaves against the claims and demands of all persons whatever, and especially against all claims or demands
84 of the Government of the United States, and against all orders and proclamations of the President of the United States.

That on the 22nd day of September, 1862, the President of the United States issued a proclamation of which a substantial copy is herewith filed as a part of this plea marked (No. 1.) [The paper referred to, has already been copied in plea No. 3.]

That on the first day of January, 1863, the President of the United States issued another proclamation of which a substantial copy is herewith filed as part of this plea marked (No. 2). [The paper referred to has already been copied in plea No. 3.]

That on the first day of January, 1863, and from that time, until and after the sale and delivery of the said negroes, both the said plaintiff's testator, the said George Rives, and the said George L. Peyton, were participants in the then existing rebellion against the United States, and they and the said thirty-three negroes were residents of Albemarle County, in the State of Virginia, which said county was in the said proclamations of January 1st, 1863, included by the President among the States and parts of States engaged in the said rebellion.

And the defendant says that, by reason of said premises, the said thirty-three negroes were at the time of said contract, sale, and delivery by the plantiff's testator, the said George Rives, to the said
85 George L. Peyton, free persons, and so the warranty of title in this plea hereinbefore set forth was broken and the said George L. Peyton and his said sureties sustained damages to the full amount of the said writings obligatory, which damages said defendant now offers to set off, &c., &c.

26TH PLEA.

And the said defendant, for a further plea in this behalf, says that the said supposed writings obligatory, and each of them, in the plaintiff's declaration mentioned, were executed by the said George L. Peyton, as principal, and by the said Wm. H. Peyton and the said Wm. P. Farish, as his sureties, in consideration of part of the price of thirty three negroes which the plaintiff's testator, the said Geo. Rives, on the 5th day of December, 1863, contracted to sell, and on the 1st day of January, 1866, did sell and deliver to the said Geo. L. Peyton.

And the said Geo. Rives did then and there warrant the title to said thirty-three negroes, as slaves, against the claims and demands of all persons whatever, and especially against all claims to freedom which said persons, or any of them sold as slaves as aforesaid, by said George Rives to said George L. Peyton, might at any time thereafter set up or assert under or by virtue of any order or proclamation of the President of the United States, and under or by virtue of any authority or power of the United States, or *Army* officer thereof.

86 That on the 22nd day of September, 1862, the President of the United States issued a proclamation of which a substantial copy is herewith filed as a part of this plea, marked (No. 1.) [The paper referred to has already been copied in plea No. 3.]

That on the first day of January, 1863, the President of the United

States issued another proclamation of which a substantial copy is herewith filed as a part of this plea, marked (No. 2.) [The paper referred to has already been copied in plea No. 3.]

That on the first day of January, 1863, and from that time, until and after the sale and delivery of the said negroes, both the said plaintiff's testator, the said George Rives, and the said George L. Peyton, were participants in the then existing rebellion against the United States, and they and the said thirty-three negroes were residents of Albemarle County in the State of Virginia, which said county was in the said proclamation of January 1st, 1863, included by the President among the States and parts of States engaged in the said rebellion.

And the defendant says that, by reason of said premises, the said thirty-three negroes were at the time of said contract, sale, and delivery by the plaintiff's testator, the said George Rives, to the said George L. Peyton, free persons, and so the warranty of title in this plea hereinbefore set out was broken, and the said Geo. L. Peyton, and his said securities, sustained damages to the full amount of the said writings obligatory, which damages the said defendant now offers to set off, &c., &c.

87

27TH PLEA.

And the said defendant, for a further plea in this behalf, says that the said supposed writings obligatory, and each of them, in the plaintiff's declaration mentioned, were executed by the said George L. Peyton, as principal, and by the said Wm. H. Peyton and the said Wm. P. Farish, as his sureties, in consideration of part of the price of thirty-three negroes which the plaintiff's testator, the said George Rives, on the 5th day of December, 1863, contracted to sell and *and* on the 1st day of January, 1864, did sell and deliver to the said George L. Peyton. And the said George Rives did then and there warrant the title to said thirty-three negroes as slaves against the claims and demands of all persons whatever, and especially against all claim to freedom which said persons or any of them, sold as slaves as aforesaid by said George Rives to said George L. Peyton, might at any time thereafter set up or assert under or by virtue of any order or proclamation of the President of the United States, and under or by virtue of any authority or power of the United States or any officer thereof.

And the defendant further says that afterwards, to wit, on the day of , in the year 1865, the said slaves and each and every one of them, under and by virtue of the proclamations of the President of the United States, and under and by virtue of the laws of the United States did set up and assert and did successfully maintain all the rights and privileges of free persons and were and continued to be free persons and not slaves; so the warranty of title in this plea hereinbefore set out was broken, and the said Geo. L. Peyton and his said securities sustained damages to the full amount of the said writings obligatory, which damages the said defendant now offers to set off, &c., &c.

88

A. J. FARISH,
Adm'r of Wm. P. Farish.

ROBERTSON, SOUTHALL & DUKE, *P. D.*

STATE OF VIRGINIA, U. S. OF AMERICA,
Western District of Va., to wit:

I, George Patterson, a United States commissioner in and for said State and district, do certify that A. J. Farish personally appeared be-

fore me and made oath that the matters stated in the foregoing pleas, numbered from 1 to 27 inclusive, are true to the best of his knowledge, information, and belief.

Given under my hand this 5th of July, 1876.

GEORGE PATTERSON,
United States Commissioner.

89 *Notice to scale.*

C. EDWARD RIVES, EXECUTOR GEORGE RIVES, dec'd
vs.
A. J. FARISH, ADMR. d. b. n. c. AT. OF WM. P. Farish, dec'd.
} Notice to scale.

The defendant hereby gives the plaintiff notice that, on the trial of this cause he will insist upon his right to have the bonds sued upon scaled according to the provisions of ch'pter 138 of Code of Virginia (edition of 1873) as bonds, which were either, according to the true understanding and agreement of the parties to be fulfilled or performed in Confederate State treasury notes or were entered into with reference to such notes as a standard of value.

Joinder in to demur'er declaration.

And at another day, to wit, at rules held in the clerk's office of the said court, on the first Monday, in August, 1876, being the 7th day of the month, came the plaintiff by his attorneys, and the said plaintiff says that the said declaration and the matters therein contained in manner and form as the same are above stated and set forth are sufficient in law for him, the said plaintiff, to have and maintain his aforesaid action thereof against him, the said defendant, and this the said plaintiff, is ready to verify.

Issue on 1st and 2nd pleas.

And the said plaintiff as to the first and second pleas of the said defendant by him above pleaded, and whereof respectively he hath put himself upon the country, doth the like.

90 *Demurrer to all the other pleas, numbered from 3 to 27, both numbers inclusive.*

And as to the other pleas of the said defendant, by him above pleaded, numbered from 3 to 27, both numbers included, the said plaintiff says that each and all of said pleas and the matters therein contained as the same are therein respectively pleaded and set forth are in sufficient in law to bar or preclude the said plaintiff from having or maintaining his aforesaid action thereof against him, the said defendant, and that he, the said plaintiff, is not bound by law to answer the said pleas or either of them, and this the said plaintiff is ready to verify. Wherefore, and for want of a sufficient plea in this behalf, the said plaintiff prays judgment and his damages by him sustained on occasion of the said breaches of covenant in the said declaration mentioned to be adjudged him, &c.

And at another day, to wit, at a circuit court of the United States for the western district of Virginia, held at the court-room thereof, in the city of Lynchburg, on Friday, the 29th day of September, 1876.

2 additional pleas filed, and issue joined on same.

Came the parties by their attorneys, and the defendant by leave filed two additional pleas in writing, numbered, respectively, 28 and 29, and the plaintiff joined issue on the same.

Plaintiff's demurrer to pleas numbered from 3 to 27, both inclusive, sustained.

And the plaintiff's demurrer to the defendant's pleas filed at rules, numbered from 3 to 27, both inclusive, having been argued, the
91 court is of the opinion that each and all of said last mentioned pleas are insufficient in law as a defence to the plaintiff's action, and doth therefore sustain the demurrer and reject said pleas. And on the motion of the defendant who made oath to the materiality of three witnesses, namely: M. N. Lee, N. B. Hill, and R. D. James, who appear to have been duly summoned, but are absent, an attachment is awarded against the said Lee, Hill, and James, returnable on the first day of the next term to compell their attendance here at that time.

Continuance for defendant.

And on the like motion this cause is continued at the costs of the defendant until the next term . The said two additional pleas numberedrespectively 28 and 29, are in the words and figures following, to wit:

1st additional plea, No. 28.

The said defendant craves oyer of the agreement of the 5th of December, 1863, and of the bonds or writings obligatory bearing date on the 1st day of January, 1864, in the first count mentioned and set forth, which being read to him, the said defendant for a further plea in this behalf to the said first count says that the said bonds or writings obligatory, bearing date on the 1st day of January, in the year 1864, executed by George L. Peyton and W. P. Farish and William H. Peyton as his securities, to the plaintiff's testator, George Rives, one of them for the sum of $8,000, and the other for the sum of $12,000 were not
92 made, executed, or delivered in pursuance of the agreement of the 5th of December, 1863, in the said first count set forth and described, were not agreed upon by all or any of the said parties and the said George Rives, nor were they given by the former and accepted by the latter as a compliance with the clause in said agreement of the 5th of December, 1863, by which it was stipulated "that the said George L. Peyton for the said sum of $20,000, should give his note with Wm. P. Farish and Wm. H. Peyton as surities for that sum, to be paid in twelve months after call, in equal annual payments thereafter, or at said Peyton's option it may be on call all or part paid." And the defendant further says that the thirty-three negroes, for part of the purchase money of which said bonds were given, were not delivered by said George Rives to the said George L. Peyton in pursuance of the said agreement of the 5th of December, 1863, as is in the said first count set

forth and averred, and of this the said defendant puts himself upon the country.

2d additional plea, No. 29.

And the said defendant craves oyer of the agreement of the 5th of December, 1863, and of the two bonds or writings obligatory bearing date on the 1st day of January, 1864, in the second count mentioned and set forth, which being read to him, the said defendant for a further plea in this behalf to the said second count says, that the two bonds or writing obligatory in the said second count set forth, both bearing bearing date on the 1st day
93 January, 1864, one for the sum of $8,000 and the other for the sum of $12,000, executed by the said George L. Peyton and by Wm. P. Farish and Wm. H. Peyton as his sureties, were not made, signed, sealed, or delivered by the obligors therein in lieu of the note for $20,000, specified in the agreement of the 5th of December, 1863, in said second count set forth, and were not accepted by the said George Rives as a compliance on the part of the said George L. Peyton with that provision in said agreement of the 5th of December, 1863, by which the said George L. Peyton "bound himself to give to the said George Rives his note, with Wm. P. Farish and Wm. H. Peyton as sureties, for the further sum of $20,000, to be paid in twelve months after call, in equal annual payments thereafter, or at said Peyton's option it may be on call all or a part paid," and the defendant further says that the thirty-three negroes, for part of the purchase money of which said bonds were given, were not delivered by said George Rives to said George L. Peyton, in pursuance of said agreement of the 5th of December, 1863, as is in the said second count set forth and averred; and of this he puts himself upon the country.

A. J. FARISH,
Adm'r de b. n. c. t. a. of W. P. Farish, dec'd.

WM. J. ROBERTSON,
R. T. W. DUKE,
Attorneys for Def't.

[Folios 94, 95, and portion 96 erased.—PRINTER.]

96 And at another day, to wit, at a circuit court of the United States for the western district of Virginia, held at the court room thereof, in the city of Lynchburg, on Tuesday, the 25th day of September, 1877:

Plaintiff being dead, cause revived.

97 It appearing to the court that the plaintiff in this cause has died since the last term of this court, and that George C. Rives, of the State of Texas, is now the duly qualified administrator de bonis non, with will annexed of the said Geo. C. Rives, deceased: On his motion, it is ordered that this cause be, and is hereby, revived in the name of the said Geo. C. Rives, administrator d. b. n. c. t. a. of Geo. Rives, deceased, plaintiff, against A. J. Farish, administrator d. b. n. c. t. a. of Wm. P. Farish, deceased, defendant, and this cause is continued until the next term.

In said court the 22d March, 1878—continued.

And at another day, to wit, at a circuit court of the United States

for the western district of Virginia, held at the court room thereof, in the city of Lynchburg, on Saturday, the 21st day of September, 1878:

Came the parties by their attorneys, and thereupon came a jury, to-wit: Jacob A. Walton, George A. Kinnear, Thomas Coffin, John Kinnear, T. W. Green, C. W. Price, William L. Hazlewood, Frank Smith, James Mathias, William T. Anderson, T. E. McVeigh and E. M. Ware, who being elected, tried, and sworn the truth to speak upon the issues joined, and having heard the evidence, by consent of the parties, were adjourned till ten o'clock Monday morning.

98 And at another day, to wit, at a circuit court of the United States for the western district of Virginia, held at the court room thereof, in the city of Lynchburg, on Monday, the 23d day of September, 1878:

Came the parties by their attorneys, and the jury sworn on Saturday last appeared in court according to their adjournment, and it being agreed by counsel on both sides that at a previous term of this court the demurrer which the defendant had filed to the plaintiff's declaration was overruled by the court, but by inadvertance the clerk omitted to enter the judgment of the court to that effect: It is now ordered that the case stand as if such judgment had been formally entered at the proper time; and, thereupon the said jury were adjourned till ten o'clock to-morrow morning.

And now at this day, to wit, at a circuit court of the United States for the western district of Virginia, held at the court room thereof, in the city of Lynchburg, on Tuesday, the 24th day of September, 1878, being the same day and year first herein mentioned:

Came the parties by their attorneys, and the jury sworn to try the issues in this cause appeared in court according to their adjourn-
99 ment, and having fully heard the evidence and arguments of counsel, upon their oath, do say:

Verdict.

"We, the jury, find for the plaintiff on the issues joined and assess his damages at $1,000, with interest at the rate of six per cent. per annum from the 1st of Jan'y, 1865, till paid, that being the scaled value as of the 1st of Jan'y, 1864, of the nominal amount of the bonds sued on, less the one year's interest credited thereon.

"C. W. PRICE."

Judgment.

Therefore, it is considered by the court that the plaintiff recover against the defendant his damages, assessed as aforesaid, to wit, $1,000, with interest thereon, to be computed after the rate of six per centum per annum from the said 1st day of Jannary, 1865, till payment; and his costs by him about his suit in this behalf expended, "to be levied of the goods and chattels of the decedent in the hands of the defendant to be administered."

MEMORANDUM.—On the trial of the last cause the plaintiff excepted to sundry rulings of the court given in the progress thereof, and tendered his bills of exception, No. 1 and No. 2, which were received, signed and sealed by the court, and ordered to be made part of the record in the cause, and is in the words and figures following, to wit:

RIVES ADM'R.
vs.
FARISH'S ADM'R, &C.

Be it remembered that on the trial of this case, the plaintiff, to sustain the issues joined on his part, offered in evidence and read
100 to the jury the following papers, to wit:

1. A contract in writing between Geo. Rives and Geo. L. Peyton, in the words and figures following, to wit:

List of serv'ts sold to G. L. Peyton.

	Age.				
Jno	49	Abraham	46	George	36
Sally	39	Mary	34	Lucy	31
Charles	19	Randel	13	Mariah	12
Nelly	16	Lewis	8	Shedmomonia	8
Albert	13	James	6	Kis	6
Mildred	9	Abraham	Inft.	Patsey	51
Rebecca	7	"		"	
Isaah	5	"			
Phil	2	Julia	27	Emma	35
Sarah	inft.	Tom	6	Mary	13
		James	3	Evelina	7
		Sam	1	Martha	5
				Agness	3

I have this day contracted to sell & deliver on the place on the 1st of Jan'y next to Geo. L. Peyton the above list of negroes, thirty-three in number. The title thereto I warrant, but make no warranty of soundness. For the same negroes the said Geo. L. Peyton agrees to pay, on delivery, the sum of twenty-five thousand dollars in bankable Confederate currency, & in addition to give his note, with Wm. P. Farish & Wm. H. Peyton as securities for the farther sum of twenty thousand dollars, to be paid in twelve months after call, in equal annual payments thereafter, or at said Peyton's option, it may be, on call, all or a part paid. The s'd Geo. Rives covenants he will not call on s'd Peyton for specie, when it is at a premium, but engaging on his part to be satisfied with the bankable currency of the day, on the stipulation
101 to choose his own time for the call. The s'd postponed payment to carry interest from 1st of Jan'y next & to be annually paid at Monticello Bank. The s'd Geo. Rives farther engages to furnish s'd Peyton 100 b'r'ls of corn at $20 per b'r'l, to be delivered on the place as soon as gathered; & the money therefor to be paid down in Confederate bankable currency.

In witness whereof & mutual obligation to perform our respective engagements, we this day, 5th of Dec., 1863, have signed our hands and seals.

GEO. RIVES. [S'L.]
GEO. L. PEYTON. [SEAL.]

[U. S. internal revenue. 5 cts. stamp here cancelled.]

Stamped before me this 9th day May, 1870, in accordance with the internal revenue law.

A. M. LAWSON,
Dep'y Collector, 6th Dist. Va.

2. A bond of Geo. L. Peyton, Wm. H. Peyton, and Wm. P. Farish to Geo. Rives, for $8,000, in the words and figures following, viz.

$8,000.]

On demand, or twelve months thereafter, at the option of the obligors, we promise to pay, in the bankable currency of the day (according to agreement of the 5th Dec'r last), to George Rives, his heirs or assigns, eight thousand dollars, with interest from date, to be annually paid
102 on 1st January at Monticello Bank, Charlottesville; the same being in part of the purchase money for thirty-three negroes, the title whereof is warranted, but no warranty is made of soundness. The said demand shall be made in writing by said George Rives, his assigns or legal representatives only.

In witness whereof, we have hereto put our hands and seals this 1st day of January, 1864.

GEO. L. PEYTON. [SEAL.]
WM. H. PEYTON, (security.) [SEAL.]
WM. P. FARISH, (security.) [SEAL.]

[U. S. internal revenue, $4 stamp here cancelled.]

(Indorsement:) "Rec'd interest in full to 1st Jan'y, 1865. G."

3. A bond from same obligors to said Rives for $12,000, in the words and figures following, to wit:

$12,000.]

On demand, or two years thereafter, at the option of the obligors, we promise to pay, in the bankable currency of the day (according to agreement of the 5th De'r last), to George Rives, his heirs, or assigns twelve thousand dollars, with interest from date, to be annually paid on 1st January, at Monticello Bank, Charlottesville; the same being in part of the purchase money for thirty-three negroes, the title whereof is warranted but no warranty is made of soundness. The said de-
103 mand shall be made in writing by said George Rives, his assigns, or legal representatives only. In witness whereof we have hereto put our hands and seals this 1st day of January, 1864.

GEO. L. PEYTON. [SEAL.]
WM. H. PEYTON, (as security.) [SEAL.]
WM. P. FARISH, (security.) [SEAL.]

[U. S. internal revenue $6 stamp here, cancelled.]

(Indorsement:) Rec'd interest in full to 1st Jan'y, 1865.

And further to sustain the issues joined on his part, the plaintiff proved—

1. That on the 1st Jan'y, 1864, his testator, Geo. Rives, at his residence on the farm in Albemarle on which he lived on the 5th Dec'r, 1863, delivered to Geo. L. Peyton the 33 slaves mentioned in their contract of said date, and at or about the same time, and at the same place, the 100 barrels of corn mentioned in said contract.

2. That said slaves were the only slaves ever sold by Geo. Rives to Geo. L. Peyton.

3. That said Rives on the 28th August, 1866, and more than two years before the institution of this suit made a demand in writing on Wm. P. Farish for payment of the bonds aforesaid, in the words and figures following, to wit:

Messrs. GEO. L. PEYTON, WM. H. PEYTON, and WM. P. FARISH:

GEN'T'N: Whereas I hold two bonds executed to me by you on 1st day of Jan'y, 1864, one for the sum of eight thousand dollars
104 payable on demand, or twelve months thereafter, at the option of the obligors, (in bankable currency of the day, according to agreement of 5th Dec'r last, and the other bond for the sum of twelve thousand dollars) payable on demand or two years thereafter as stipulated in the case of first bond, said demand to be made by me in writing. You will therefore please take notice that I now demand payment of said bonds, both the principal and arrears of interest.

Respectfully,

GEORGE RIVES.

ALBEMARLE COUNTY, *to wit:*

This day personally appeared before me, a justice of the peace for said county, F. M. Wills, who made oath that he had delivered a true copy of the foregoing notice to Wm. P. Farish on the 28th day of August, 1866.

This 28th day of August, 1866.

JAMES LOBBAN, *J. P.*

[U. S. internal revenue stamp, 5 c'ts, here cancelled.]

And that on the 30th Aug't, 1866, said Rives made a like demand on Geo. L. and Wm. H. Peyton, by delivering to each of them a notice in the words and figures following, to wit:

Messrs. G. L. PEYTON, WM. H. PEYTON, and WM. P. FARISH:

GENT'N: Whereas I hold two bonds executed to me by you on 1st day of Jan'y, 1864, one for the sum eight thousand dollars
105 payable on demand, or twelve months thereafter, at the option of the obligors, in the bankable currency of the day, according to agreement of 5th Dec'r last, and the other bond for the sum of twelve thousand dollars, payable on demand, or two years thereafter, as stipulated in the case of first bond, said demand to be made by me in writing. You will therefore please take notice that I now demand payment of said bonds, both principal and arrears of interest.

Respectfully,

GEORGE RIVES.

Return.

Executed Aug't 30th, 1866, on George L. & Wm. H. Peyton, by delivering to each in person a copy of the within notice.

J. TOWBERMAN, *D.*
For SAM'L PAUL, *S. A. C.*

4. That at and ever since the date of the demands aforesaid, the bankable currency of Va. has consisted wholly of national bank notes and United States notes called greenbacks, which have always been of about equal value in their relations to gold.

And then the plaintiff rested.

And the defendant to sustain the issues joined on his part, offered to introduce evidence tending to prove—

106 1. That Confederate currency was the only currency in circulation in Va. in Dec'r, 1863, or Jan'y, 1864.

2. That in December, 1863, the value of gold in relation to such currency was as 20 to 1, and in January, 1864, as 19 to 1.

3. That of the thirty-three slaves sold by Geo. Rives to Geo. L. Peyton, one woman and her two children were scrofulous, and another woman a cripple; and that in Dec'r, 1863, and Jan'y, 1864, the said 33 slaves were not worth in Richmond, Va., in Confederate currency, as much as $45,000; and that they were worth less in Albemarle, where they were sold, than in Richmond.

4. That such a lot of slaves, before the late war, even when the price of slaves was at its highest, would not have been worth more than 8 or 9,000 dollars.

5. That in Dec'r, 1863, and in Jan'y, 1864, all Confederate currency in circulation was bankable.

6. That as early as the fall of 1863, there was a general expectation among the people of Va. that the Confederate Congress would adopt measure' to reduce the volume of Confederate money, and that the value of such money would be thereby much increased.

7. That in point of fact, the Confederate Congress, in Feb'y, 1864, did pass a law taxing to the extent of 33⅓ per cent. all Confederate
107 currency which should not be invested in 4 per cent. Confederate bonds, on or before the 1st of April, 1864; the effect of which law to depreciate still further the value of Confederate currency then in circulation, and that after the 1st of April, 1864, the Confederate money issued prior thereto ceased to be bankable.

8. That in Dec'r, 1863, and Jan'y, 1864, slaves were not being sold at all for gold.

9. That about the same time Tucker Coles, of Albemarle, living 5 or 6 miles from Geo. Rives, owned about 200 slaves, mechanics and field hands, and averaging in value better than the slaves of Geo. Rives; that he tried to sell a large number of said slaves at $50 a head, in gold, but could not, and that he would have sold them at $30 a head, in gold, had it been offered to him.

10. That all of the slaves purchased of Geo. Rives by Geo. L. Peyton perished as property on his hands at the close of the war.

11. That in August, 1866, the premium on gold as compared with national currency, was 49 per cent.; in August, 1867, it was 41 per cent., and in August, 1868, 45 per cent., and that at this time such premium is only ½ of 1 per cent.

To the introduction of each and every part of which evidence,
108 the plaintiff objected & moved the court to exclude the same.

First. Because the contract sued upon is in writing and its meaning free from ambiguity, obscurity, or uncertainty of any kind, and cannot, therefore, be explained, added to, or in any manner varied by parol evidence.

Second. Because the evidence offered does not come within the scope or meaning of the statute of Virginia (code of 1873, p. 979–'80), in reference to Confederate contracts, which was intended to apply only to contracts for the payment of "dollars" in general, and not to those in which the kind of dollars is specifically expressed, or becomes certain by some event or contingency mentioned in the contract.

Third. Because if according to the true interpretation of the Virginia statute just referred to, it makes parol testimony admissible to explain, add to, or in any manner vary a contract in writing entered into prior to its enactment (in 1860), and which is in no way ambiguous or uncertain, then the statute is a violation of the federal Constitution. And so far as said statute authorizes courts and juries to adjust contracts for

the sale of property by reference to the value of the property sold
109 and not to the price agreed, not only impairs, but destroys the obligation of the contract, making a new one in its stead, and is a plain violation of the Constitution aforesaid.

Fourth. Because in no case does the said statute of Virginia, even if constitutional as to any part of it, in its application to contracts made before its passage, which is denied, admit any other than relevant testimony, and that which is now excepted to has no relevancy whatever to any issue or question involved in the cause; since if every fact which it legitimately tends to prove, were admitted they would show no defense to the plaintiff's case.

But the court overruled the plaintiff's objection to each and every part of said evidence and allowed it to go to the jury. To which ruling of the court the plaintiff excepts and prays that his bill of exceptions may be signed, sealed, and allowed, which is done.

HUGH L. BOND. [SEAL.]

Plaintiff's 2d bill of exceptions.

GEO. C. RIVES, ADM'R, D. B. N. C. T. A. OF GEO. Rives, dec'd, plaintiff, *against* A. J. FARISH, ADM'R D. B. N. C. T. A. OF WILLIAM P. Farish, dec'd, defendant. } In covenant.

Be it remembered, that on the trial of this cause the plaintiff,
110 to sustain the issues joined on his part, gave in evidence to the jury the following papers, to wit:

I. A contract in writing between Geo. Rives, plaintiff's testator, and Geo. L. Payton, in the words and figures following, to wit:

List of serv'ts sold to G. L. Peyton.

	Age.				
Jno	49	Abraham	46	George	36
Sally	39	Mary	34	Lucy	31
Charles	19	Randel	13	Mariah	12
Nelly	16	Lewis	8	Shedmomonia	8
Albert	13	Silas	6	Kis	6
Mildred	9	James	4	Fonyo	51
Rebecca	7	Abraham, inf't		Patsey	51
Isaah	5	"		"	
Phil	2	Julia	27	Emma	35
Sarah, inf't		Tom	6	Mary	13
		James	3	Evelina	7
		Sam	1	Martha	5
				Agnes	3

I have this day contracted to sell & deliver on the place on the 1st of Jan'y next to Geo. L. Peyton the above list of negroes, thirty-three in number. The title thereto I warrant, but make no warranty of soundness. For the same negroes the said Geo. L. Peyton agrees to pay on delivery the sum of twenty-five thousand dollars in bankable Confederate currency & in addition to give his note, with Wm. P. Farish & Wm. H. Peyton as securities for the farther sum of twenty thousand dollars, to be paid in twelve months after call in equal annual payments thereafter, or at s'd Peyton's option it may be, on call, all
111 or a part paid. The s'd Geo. Rives covenants he will not call on s'd Peyton for specie when it is at a premium, but engaging on

his part to be satisfied with the bankable currency of the day on the stipulation to choose his own time for the call. The s'd postponed payment to carry interest from 1st Jan. next & to be annually paid at Monticello Bank. The s'd Geo. Rives farther engages to furnish s'd Peyton 150 b'r'ls of corn at $20 per b'r'l, to be delivered on the place as soon as gathered, & the money therefor to be paid down in Confederate bankable currency. In witness whereof & mutual obligation to perform our respective engagements, we this day, 5th of Dec., 1863, have signed our hands & seals.

GEO. RIVES. [S'L.]
GEO. L. PEYTON. [SEAL.]

[5 cts. U. S. internal revenue stamp here, cancelled.]

Stamped before me this the 9th day May, 1870, in accordance with the internal revenue law.

A. M. LAWSON,
Dep'y Collector 6th Dist. Va.

II. A bond, in the words and figures following, to wit:

$8,000.]

On demand or twelve months thereafter, at the option of the obligors, we promise to pay, in the bankable currency of the day (according
112 to agreement of the 5th Dec'r last) to George Rives, his heirs or assigns, eight thousand dollars, with interest from date, to be annually paid on 1st January at Monticello Bank, Charlottesville, the same being in part of the purchase money for thirty-three negroes, the title whereof is warranted, but no warranty is made of soundness. The said demand shall be made in writing by said George Rives, his assigns or legal representatives only.

In witness whereof we have hereto put our hands & seals this 1st day of January, 1864.

GEO. L. PEYTON. [SEAL.]
WM. H. PEYTON (as security). [SEAL.]
WM. P. FARISH (security). [SEAL.]

[U. S. internal revenue stamp here, cancelled.]

(Indorsement:) Rec'd interest in full to 1st Jan'y, 1865. G.

III. A bond, in these words and figures, to wit:

$12,000.]

On demand, or two years thereafter, at the option of the obligors, we promise to pay, in the bankable currency of the day (according to agreement of the 5th Dec'r last), to George Rives, his heirs or assigns, twelve thousand dollars, with interest from date, to be annually paid on 1st January at Monticello Bank, Charlottesville, the same being in part of the purchase money for thirty-three negroes, the title whereof is warranted, but no warranty is made of soundness. The said demand
113 shall be made in writing by said George Rives, his assigns or legal representatives only.

In witness whereof we have hereto put our hands & seals this 1st day of January, 1864.

GEO. L. PEYTON. [SEAL.]
WM. H. PEYTON (as security). [SEAL.]
WM. P. FARISH (security). [SEAL.]

[$6 internal revenue stamp here, cancelled.]

(Indorsement:) Rec'd interest in full to 1st Jan'y, 1865.

And further to sustain the issues joined on his part, the plaintiff then proved the following facts, viz:

1. That on the 1st Jan'y, 1864, his testator, Geo. Rives, at his residence on the farm in Albermarle, on which he lived on the 5th Dec., 1863, delivered to Geo. L. Peyton the 33 slaves named in the list prefixed to their contract of that date; and at or about the same time and at the same place, the 100 barrels of corn also mentioned in said contract. On the 1st Jan'y, 1864, said Peyton paid to said Rives in Confederate money $25,000, the cash payment agreed to be made for the said slaves; and on the 1 Jan'y, 1865, he paid in like money one year's interest on the bonds for the deferred payments.

2. That said slaves were the only slaves ever sold by Geo. Rives to Geo. L. Peyton.

3. That said Rives, on the 28th Aug't, 1866, and more than two years before institution of this suit, made a demand in writing on Wm.
114 P. Farish for payment of the bonds hereinbefore set out, in the words and figures following, to wit:

Messrs. GEO. L. PEYTON, WM. H. PEYTON, and WM. P. FARISH:

GENT'N: Whereas I hold two bonds executed to me by you on 1st day of Jan'y, 1864, one for the sum of eight thousand dollars, payable on demand, or twelve months thereafter, at the option of the obligors, "in the bankable currency of the day, according to agreement of 5th Dec'r last," and the other bond for the sum of twelve thousand dollars, payable on demand, or two years thereafter, as stipulated in the case of first bond, said demand to be made by me in writing. You will therefore please take notice that I now demand payment of said bonds, both principal and arrears of interest.

Respectfully,

GEORGE RIVES.

ALBERMARLE COUNTY, *to wit:*

This day personally appeared before me, a justice of the peace for said county, F. M. Wills, who made oath that he delivered a true copy of the foregoing notice to Wm. P. Farish on the 28th day of August, 1866. This 28th day of August, 1866.

JAMES LOBBAN, *J. P.*

[5 cts. U. S. internal revenue stamp here, cancelled.]

And that on the 30th August, 1866, said Geo. Rives made a
115 like demand on Geo. L. Peyton and Wm. H. Peyton each, in the words and figures following, to wit:

Messrs. GEO. L. PEYTON, WM. H. PEYTON, and WM. P. FARISH:

GENT'N: Whereas I hold two bonds executed to me by you on the 1st day of Jan'y, 1864, one for the sum of eight thousand dollars, payable on demand, or twelve months thereafter, at the option of the obligors, "in the bankable currency of the day, according to agreement of 5th Dec'r last," and the other bond for the sum of twelve thousand dollars, payable on demand, or two years thereafter, as stipulated in the case of first bond, said demand to be made by me in writing. You will therefore please take notice that I now demand payment of said bonds, both principal and arrears of interest.

Respectfully,

GEORGE RIVES.

Return.

Executed Aug't 30th, 1866, on George L. & Wm. H. Peyton, by delivering to each in person a copy of the within notice.

J. TOWBERMAN, *D. for*
SAM'L PAUL, *S. & A. C.*

4. That at and ever since the dates at which the demands aforesaid were made, bankable currency in Charlottesville and throughout
116 Va. consisted wholly of national bank notes and U. States notes, called "greenbacks," and these have always been of equal value.

And then the defendant, to sustain the issues joined on his part, proved as follows, to wit:

1. By two witnesses who never saw the slaves, but who were slave auctioneers, in Richmond, Va., during and for many years before the late war, who had examined the list of said slaves prefixed to the contract between Rives and Peyton, and had heard them described; that, in their opinion, if said 33 slaves had been No. 1, and sound & healthy, they would have been worth, in Confederate money, in Richmond, Va., in Dec'r, '63, & Jan'y, 1864, from $40,000 to $45,000, but one family, scrofulous, the value of such family was diminished more than one-half; and another of them being a cripple, she was rendered worthless; that the whole 33, if sold singly, and the defects just mentioned had been known, would have brought in Richmond, Va., at the dates mentioned, only from 35 to $40,000 in like money; and if sold in families, at the time and place, and for the currency mentioned, wo' have sold for something less; that the Richmond prices for said slaves were, at the
117 time named, about $2,000 higher than the prices then prevailing for the same slaves in Albemarle, Va., where Geo. Rives & Geo. L. Peyton entered into their contract; that prior to the late war, said slaves were worth, in gold, or its equivalent, in Richmond, Va., (which was a higher market than Albemarle), about $12,000, if sound and No. 1; and with the defects mentioned of some of them, would have brought, in the same place, at the same time, and in the same currency, from $9,000 to $9,500, if sold singly; if sold in families, would have brought from $8,000 to $8,500.

2. That in Dec', '63, and Jan'y, '64, Confederate money was the only currency in Va., and continued so till end of the war between the States; that negroes during the war were worth, in Confederate money, in proportion to old values, less than real estate.

3. That in the fall of 1863, the change of the Confederate currency, by the Confederate congress, to meet about 1st Dec'r, '63, was a good deal discussed by the Va. newspapers, and much talked of by the Va. people, and the general belief was that said currency would be thereby improved, there being various opinions about it, some thinking it would increase in value a great deal, others less, but all believing in some improvement.

118 4. That Tucker S. Coles, of Albemarle, the owner of some 200 slaves, then living 5 or 6 miles from Geo. Rives', offered to sell a large number of them at $50 a piece, in gold, but could not; and it was doubtful whether he could have gotten $30 a head in gold for them; no slaves were then being sold in Albemarle for gold, and his slaves were, on an average, better than Geo. Rives'.

5. That soon after said 33 slaves were bought by and delivered to Geo. L. Peyton, he let Wm. H. Peyton have 12 of them, keeping the

rest himself, and all these slaves perished as property on their hands when the war closed.

6. The witnesses for defendant, on cross-examination, also proved that it was generally believed in Virginia that the Confederate government, even if it should be ultimately established, would never redeem all of its bonds or currency; the two auctioneer witness' proved that they had neither known nor heard of any sale of slaves during the war, for Confederate money on credit; and that they had not known or heard at any time, either before or during the war, in any sort of money, of a credit sale of slaves. And Tucker Coles, on cross-examination, proved
119 that in Dec'r, '63, or January, '64, he would not have sold his slaves on credit, at any price whatever in Confederate money, but he could not say what others would have done in that respect. Defendant's witnesses further proved, on cross-examination, that it was customary during the war for the confederate military authorities to exempt from service in the army persons engaged in agriculture, with as many as 15 working hands, tho' they did not know that this fact enhanced the market value of slaves; also that Wm. P. Farish was a man of very large means, and during the war could readily have raised as much as $200,000 of Confederate money.

7. It was further proved, on the part of deft., that on the 28th Aug't, 1866, the premium on gold, compared with national currency, was 49 per cent., that on the 28th Aug't, 1867, it was 41 per cent., and on 28th Aug't, 1868, it was 45 per cent. that at this time it is ½ of 1per cent.; that in Dec'r, '63, the value of gold compared with Confederate money was as 19 to 1, and in Jan'y, '64, as 20 to 1.

8. That on the 5th Dec., 63, as well as on 1st Jan'y, '64, there was no Confederate money that was not bankable, but that all the Con-
120 federate money then in circulation ceased to be bankable within a few months after the passage of the act of Feb'y, '64, by the Confederate Congress, for the reduction of the volume of Confederate currency, the new currency issued under said act, taking the place of the old currency aforesaid, by which act all Confederate currency in circulation at its date was made subject to a tax of 33⅓ per cent., unless invested or exchanged for 4 per cent. Confederate bonds authorized by the act, all of which will appear by reference to said act, a copy of which is in the words and figures following, to wit:

An act to reduce the currency, and to authorize a new issue of notes and bonds.

SEC. 1. The Congress of the Confederate States of America do enact, that the holders of all treasury notes above the denomination of five dollars, not bearing interest, shall be allowed until the first day of April, 1864, east of the Mississippi River, and until the first day of July, 1864, west of the Mississippi River, to fund the same, and until the periods and at the places stated, the holders of all such treasury notes shall be allowed to fund the same in registered bonds payable twenty years after their date, bearing interest at the rate of four per cent. per annum, payable on the first day of January, and July of each year.

SEC. 2. The Secretary of the Treasury is hereby authorized to issue the bonds required for the funding provided for in the preceding
121 section, and until the bonds can be prepared, he may issue certificates to answer the purpose. Such bonds and certificates shall be receivable without interest, in payment of all government dues payable in the year 1864, except export and import duties.

SEC. 3. That all treasury notes of the denomination of one hundred dollars, not bearing interest, which shall not be presented for funding, under the provisions of the first section, this act shall, from and after the first day of April, 1864, east of the Mississippi River, and the first day of July, 1864, west of the Mississippi River, cease to be receivable in payment of public dues, and said notes, if not so presented at that time, shall, in addition to the tax of thirty-three and one-third cents imposed in the 4th section of this act, be subject to a tax of ten per cent. per month, until so presented, which taxes shall attach to said notes wherever circulated, and shall be deducted from the face of said notes whenever presented for payment or for funding, and said notes shall not be exchangeable for the new issue of treasury notes provided for in this act.

SEC. 4. That on all said treasury notes not funded or used in payment of taxes at the dates and places prescribed in the first section of this act, there shall be levied at said dates and places a tax of thirty-three and one-third cents for every dollar promised on the face of said notes.

Said tax shall attach to said notes wherever circulated, and
122 shall be collected by deducting the same at the treasury, its depositories, and by the tax collectors, and by all government officers receiving the same, whenever presented for payment, or for funding, or in payment of government dues, or for postage, or in exchange for new notes as hereinafter provided, and said treasury notes shall be fundable in bonds, as provided in the first section of this act, until the first day of January, 1865, at the rate of sixty-six and two-thirds cents on the dollar, and it shall be the duty of the Secretary of the Treasury at any time between the first of April, east, and the first of July, 1864, west, of the Mississippi River, and the first of January, 1865, to substitute and exchange new treasury notes for the same, at the rate of sixty-six and two-thirds cents on the dollar, provided that notes of the denomination of one hundred dollars shall not be entitled to the privilege of said exchange; provided further, that the right to fund any of said treasury notes after first day of January, 1865, is hereby taken away; and provided further, that upon all such treasury notes which may remain outstanding on the first day of January, 1865, and which may not be exchanged for new treasury notes as herein provided, a tax of one hundred per cent. is hereby imposed.

123 SEC. 5. That after the first day of April next all authority heretofore given to the secretary of the treasury to issue treasury notes shall be, and is hereby, revoked; provided the secretary of the treasury may, after that time, issue new treasury notes in such form as he may prescribe, payable two years after the ratification of a treaty of peace with the United States, said new issues to be receivable in payment of all public dues except export and import duties, and to be issued in exchange for old notes at the rate of two dollars of the new for three dollars of the old issues, whether said old notes be surrendered for exchange by the holders thereof, or be received into the treasury under the provisions of this act, and the holders of the new notes or of the old notes, except those of the denomination of one hundred dollars, after they are reduced to sixty-six and two-thirds cents on the dollar, by the tax aforesaid, may convert the same into call certificates, bearing interest at the rate of four per cent. per annum, and payable two years after the ratification of a treaty of peace with the United States, unless sooner converted into new notes.

SEC. 6. That to pay the expenses of the government not otherwise provided for, the secretary of the treasury is hereby authorized to issue

six per cent. bonds to an amount not exceeding five hundred millions of dollars, the principal and interest whereof shall be free from taxation; and for the payment of the interest thereon the entire net receipts of any export duty hereafter laid on the value of all cotton, tobacco, and naval stores, which shall be exported from the Confederate States, and the net proceeds of the import duties now laid, or so much thereof as may be necessary to pay annually the interest, are hereby specially pledged; provided, that the duties now laid upon imports and hereby pledged, shall hereafter be paid in specie, or in sterling exchange, or in the coupons of said bonds.

SEC. 7. That the secretary of the treasury is hereby authorized, from time to time, as the wants of the treasury may require it, to sell or hypothecate for treasury notes said bonds, or any part thereof, upon the best terms he can, so as to meet appropriations by Congress, and at the same time reduce and restrict the amount of the circulation in treasury notes within reasonable and safe limits.

SEC. 8. The bonds authorized by the sixth section of this act may be either registered or coupon bonds, as the parties taking them may elect, and they may be exchanged for each other under such regulations as the secretary of the treasury may prescribe. They shall be for one hundred dollars, or some multiple of one hundred dollars, and shall, together with the coupons thereto attached, be in such form and of such authentication as the secretary of the treasury may prescribe. The interest shall be payable half yearly, on the first of January and July in each year the principal shall be payable not less than thirty years from their date.

SEC. 9. All call certificates shall be fundable, and shall be taxed in all respects, as is provided for the treasury notes into which they are convertible. If not converted before the time fixed for taxing the treasury notes, such certificates shall from that time bear interest upon only sixty-six and two-thirds cents for every dollar promised upon their face, and shall be redeemable only in new treasury notes at that rate; but after the passage of this act no call certificates shall be issued until after the first day of April, 1864.

SEC. 10. That if any bank of deposit shall give its depositors the bonds authorized by the first section of this act in exchange for their deposits, and specify the same on the bonds by some distinctive mark or token, to be agreed upon with the secretary of the treasury, then the said depositor shall be entitled to receive the amount of said bonds in treasury notes bearing no interest, and outstanding at the passage of this act, provided the said bonds are presented before the privilege of funding said notes at par shall cease, as herein prescribed.

SEC. 11. That all treasury notes heretofore issued of the denomination of five dollars shall continue to be receivable in payment of public dues, as provided by law, and fundable at par under the provisions of this act, until the first day of July, 1864, east, and until the first day of October, 1864, west, of the Mississippi River, but after that time they shall be subject to a tax of thirty-three and one-third cents on every dollar promised on the face thereof—said tax to attach to said notes wherever circulated, and said notes to be fundable and exchangeable for new treasury notes, as herein provided, subject to the deduction of said tax.

SEC. 12. That any State holding treasury notes, received before the times herein fixed for taxing said notes, shall be allowed until the first day of January, 1865, to fund the same in six per cent. bonds of the Confederate States, payable twenty years after date, and the interest pay-

able semi-annually. But all treasury notes received by any State after the time fixed for taxing the same as aforesaid, shall be held to have been received diminished by the amount of said tax. The discrimination between the notes subject to the tax and those not so subject shall be left to the good faith of each State, and the certificate of the governor thereof shall in each case be conclusive.

SEC. 13. That treasury notes heretofore issued bearing interest at the rate of seven dollars and thirty cents on the hundred dollars per annum, shall no longer be received in payment of public dues, but shall
127 be deemed and considered bonds of the Confederate States, payable two years after a ratification of a treaty of peace with the United States, bearing the rate of interest specified on their face, payable on the first day of January in each and every year.

SEC. 14. That the secretary of the treasury be, and he is hereby, authorized, in case the exigencies of the government should require it, to pay the demand of any public creditor whose debt may be contracted after the passage of this act, willing to receive the same, in a certificate of indebtedness to be issued by said Secretary, in such form as he may deem proper, payable two years after a ratification of a treaty of peace with the United States, bearing interest at the rate of six per cent. per annum, payable semi-annually, and transferable only by special endorsement under regulations to be prescribed by the Secretary of the Treasury, and said certificate shall be exempt from taxation in principal and interest.

SEC. 15. The secretary of the treasury is authorized to increase the number of depositories so as to meet the requirements of this act, and with that view, to employ such of the banks of the several States as he may deem expedient.

SEC. 16. The secretary of the treasury shall forthwith advertise this act in such newspapers published in the several States, and by
128 such other means as shall secure immediate publicity, and the secretary of war and the secretary of the navy shall each cause it to be published in general orders for the information of the army and navy.

SEC. 17. The forty-second section of the act for the assessment and collection of taxes, approved May 1, 1863, is hereby repealed.

SEC. 18. The secretary of the treasury is hereby authorized and required, upon the application of the holders of any call-certificate which, by the first section of the act "to provide for the funding and further issue of treasury notes," approved March 23, 1863, was required to be "thereafter deemed to be a bond," to issue to such hold a bond therefor upon the terms provided by said act. [Approved February 17, 1864.]

9. That Wm. P. Farish died in October, 1869, and Geo. Rives in the summer of 1874.

Instructions asked for by plaintiff and refused.

And there being no other evidence in the cause, the plaintiff asked the court to instruct the jury as follows, to wit:

1. If the jury find from the evidence that the contract in writing between Geo. Rives and Geo. L. Peyton, dated the 5th December, 1863, and given in evidence by the plaintiff, is the contract referred to in the bonds sued upon, then the court instructs the jury that said contract and bonds are to be construed together, and that so construed, they

import in themselves, not a contract to be paid absolutely in Confederate money, or any other specific currency, but a contract of hazard,
129 that is to say, a contract payable in whatever currency should be bankable at the respective dates when the obligors were bound to pay said bonds, that is to say, on the 30th Aug't, 1867, as to the smaller bond, and the 30th Aug't, 1868, as to the larger bond.

2. If the jury finds that the contract of the 5th of Dec'r, 1863, and two bonds of the 1 Jan'y, 1864, given in evidence by the plaintiff, contain the true, understanding, and agreement of the parties as to the currency in which said bonds were to be paid; that more than two years before the institution of this suit Geo. Rives demanded payment of said bonds of each of the obligors therein, and in the mode agreed upon; that at the time of said demand, and ever since, bankable currency in Charlottesville and throughout Virginia consisted wholly of national bank notes and greenback notes of the U. S. Gov't, and that these have always been of equal value in their relation to gold; then the jury must find for the plaintiff the face amount of the bonds, less the one year's interest credited therein.

3. That there is no evidence in the cause to warrant the jury in finding that there was any other agreement or understanding between the parties as to the kind of currency in which the bonds were to be paid than that which is contained in the written contract and bonds themselves.

But the court refused to give said instructions, or either of
130 them and charged the *the* jury as follows, to wit:

Instructions given by the court.

If the jury find from the evidence that George Rives & George L. Peyton, on the 5 day of December, 1863, entered into the contract set out in the declaration, and which has been offered in evidence, and that in pursuance thereof, and in accordance with its terms, the said Rives delivered to George L. Peyton the negroes in question, and that subsequently to the execution of this contract, and in pursuance thereof, the said Peyton gave his writings obligatory offered in evidence, the one dated the 1st day of January, 1864, for $8,000.00, and the other, bearing the same date, for $12,000.00, upon which the defendant's decedent was surety, then the plaintiff is entitled to recover the amount stipulated to be paid in said writings obligatory in the currency of the United States at its value at the time the same fell due, according to their tenor and effect, unless the jury find, from the evidence in the cause, that the said writings obligatory were at the time made and understood by the parties thereto to be made payable in Confederate money.

And if the jury find from the evidence that the said bonds or writings obligatory were made in reference to Confederate currency, then the plaintiff is entitled to recover the amount stipulated to be paid in such bonds at the value of Confederate money compared with national currency at the time of the making thereof, with interest from the
131 time said bonds, according to their tenor and effect became payable. But if the jury find, from the evidence, that the bonds and contract offered in evidence were made in view of the uncertainty of the value of the then or future bankable currency of the place of payment, and that each party, in entering into the contract, took the risk of what money should be current at the time for payment of said bonds, according to the tenor & effect thereof, then the plaintiff, if the jury find that the parties, plaintiff and defendant, executed the contract offered

in evidence, and the bonds offered in proof in pursuance thereof, is entitled to recover the sum nominated in said bonds in national currency at the time the same became due, with interest thereon.

To which ruling of the court in refusing to give to the jury the instructions asked for by him, the plaintiff excepts. And he also excepts to so much of the coust's charge to the jury as in the contingency mentioned therein, authorizes the jury to treat the bonds sued on as payable in Confederate currency, and to find for the plaintiff, only "the amount stipulated to be paid in such bonds, at the value of Confederate money compared with national currency at the time of the making thereof, with interest from the time said bonds, according to their tenor and effect, became payable.

132 The ground of this exception being that the terms of the bonds sued upon, taken in connection with the contract of Dec. 5, 1863, to which they refer, are wholly free from ambiguity, and plainly import not a contract, payable absolutely in Confederate currency, or any other currency, but a contract of hazard payable in the currency, whatever it might chance to be, which sho'd be bankable on the days on which the bonds respectively should become payable according to their tenor and effect; and there was no proper or sufficient evidence tending to show that there was any other contract between the parties, and therefore none to sustain the theory on which the instructions is predicated.

The plaintiff therefore prays that this his 2nd bill of exceptions may be signed, sealed, and allowed by the court, which is done.

HUGH L. BOND. [SEAL.]

And afterwards, to wit, in the clerk's office of the said court, on the 22nd day of October, 1878, came the said George C. Rives, administrator de bonis non, with the will annexed, of George Rives, deceased, and filed his appeal-bond, which bond is in the words and figures following, to wit:

Know all men by these presents, that we, George C. Rives, adm'r de bonis non, with the will annexed, of Geo. Rives, dec'd, are held and firmly bound unto Andrew J. Farish, administrator de bonis
133 non, with the will annexed, of Wm. P. Farish, dec'd, in the full and just sum of five hundred dollars to be paid to the said A. J. Farish, adm'r de bonis non, with the will annexed, of Wm. P. Farish, dec'd, his certain attorney, executors, administrators, or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and da ed this 22d day of October in the year of our Lord one thousand eight hundred and seventy-eight.

Whereas, lately at a circuit court of the United States for the western district of Virginia in a suit depending in said court, between Geo. C. Rives, adm'r de bonis non, with the will annexed, of Geo. Rives, dec'd, plaintiff, and Andrew J. Farish, adm'r de bonis non, with the will annexed, of William P. Farish, dec'd, defendant, judgment was rendered against the said Andrew J. Farish, adm'r de bonis, non, with the will annexed of William P. Farish, dec'd, and the said George C. Rives, adm'r de bonis non, with the will annexed, of Geo. Rives, dec'd, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Andrew J. Farish, adm'r de bonis non, with the will annexed, of William P. Farish, dec'd, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday of October next.

134 Now, the condition of the above obligation is such, that if the said George C. Rives, administrator de bonis non, with will annexed, of George Rives, dec'd, shall prosecute said writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligations to be void; else to remain in full force and virtue.

GEORGE C. RIVES, [SEAL.]
Adm'r d. b. n. of Geo. Rives, dec'd.
ROSALIE RIVES. [SEAL.]
JAMES HENRY RIVES. [SEAL.]

Sealed and delivered in presence of—
E. R. WATSON, as to Geo. C. Rives and Rosalie Rives,
J. M. MCLAUGHLIN, as to J. H. Rives.

Approved by

HUGH L. BOND,
Ct. Judge.

NOTE BY APPELLANT'S COUNSEL.—The pleas which were offered and rejected were inserted in the foregoing copy of the record, by request of counsel for the appellee.

135 UNITED STATES OF AMERICA,
Western District of Virginia, City of Lynchburg, ss:

I, S. Patterson, clerk of the circuit court of the United States, for the western district of Virginia, in the fourth circuit, do hereby certify, that the foregoing is a true transcript of the record and proceedings in a certain action of covenant lately depending in the said circuit court between George C. Rives, administrator de bonis non, with the will annexed, of George Rives, deceased, plaintiff, and Andrew J. Farish, administrator de bonis non, with the will annexed, of William P. Farish, deceased, defendant, with all things touching the same, as fully and wholly as they now exist among the records of my office.

In testimony whereof I hereto set my hand and annexed the seal of said court, at my office, in the city of Lynchburg this 6th day of November, A. D. 1878, and in the year of the Independence of the United States the 103rd.

[SEAL.] SAMUEL PATTERSON, *Clerk.*

The fee of the clerk of the said court for making out this transcript of the record, annexing seal and writing certificate is $82.85 cents.

S. PATTERSON, *Clerk.*

136 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the western district of Virginia, greeting:

Because in the records and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court before you, between George C. Rives, administrator de bonis non, with the will annexed, of George Rives, deceased, plaintiff, and Andrew J. Farish, administrator de bonis non, with the will annexed, of William P. Farish, dec'd, who in his lifetime was joint obligor with George L. Peyton and William H. Peyton, defendant, a manifest error hath happened to the great damage of the said George C. Rives, administrator be bonis non, with the will annexed, of George Rives, dec'd, as by his complaint ap-

pears: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the twenty-first day of October, in the year of our Lord one thousand eight hundred and seventy-eight.

[SEAL.]

S. PATTERSON,
Clerk of the Circuit Court of the United States,
For the Western District of Virginia, at Lynchburg.

Allowed by

HUGH L. BOND.

137 UNITED STATES OF AMERICA,
Western District of Virginia, ss:

In obedience to the within writ of error, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and all the proceedings in the within-entitled cause, as wholly and fully as the same now exists among the records of my office.

In witness whereof I have hereunto set my hand at my office in the city of Lynchburg, this day of , 1878.

S. PATTERSON, *Clerk.*

138 The United States of America to Andrew J. Farish, administrator de bonis non, with the will annexed, of William P. Parish, dec'd, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court court of the United States for the western district of Virginia, held at Lynchburg, wherein George C. Rives, administrator de bonis non, with the will annexed, of George Rives, dec'd, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this twenty-second day of October, in the year of our Lord one thousand eight hundred and seventy-eight.

[SEAL.]

HUGH L. BOND,
C't Judge.

139 Service of the within citation acknowledged this 22nd day of October, 1878.

H. H. MARSHALL,
Att'y for Farish's Adm'r.

(Indorsed:) Geo. C. Rives, adm'r d. b. n. c. t. a. of George Rives, deceased, vs. A. J. Farish, adm'r d. b. n. c. t. a. of William P. Farish, dec'd. Transcript of record.

(Indorsement on cover:) No. 156. George C. Rives, administrator de bonis non, &c., of George Rives, dec'd, plaintiff in error, vs. Andrew J. Farish, adm'r, &c., of William P. Farish, dec'd. W. Virginia C. C. U. S. Filed 10th January, 1879.